(24)

No. 06-278

IN THE

Supreme Court of the United States

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
Petitioners,

v.

JOSEPH FREDERICK,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 28, 2006
CERTIORARI GRANTED DECEMBER 1, 2006

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I. RELEVANT DOCKET ENTRIES

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOCKET NO. 03-35701

JOSEPH FREDERICK,
APPELLANT

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
APPELLEES

RELEVANT DOCKET ENTRIES
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

8/28/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): N. setting schedule as follows: appellant's opening brief is due 10/7/03; appellees' brief is due 11/7/03; appellant's optional reply brief is due 14 days from service of the answering brief. [03-35701] (ld)
10/24/03	Filed original and 15 copies aplt's opening brf (Informal: no) of 38 pages and five excerpts of record in 1 volume; served on 10/21/03. [03-35701] (jr)
10/29/03	Filed original and 15 copies Student Press Law's brief of 30 pages; served on 10/28/03 [03-35701] (sm)

12/8/03	Filed original and 15 copies aples' brf of 52 pages and 5 excerpts of record in 1 vol; served on 12/4/03. Deficient; excerpts need white covers. Notified counsel. [03-35701](jr)
1/8/04	Filed original and 15 copies aplt's rpy brf (Informal: no) of 27 pages; served on 1/5/04. [03-35701] (jr)
5/3/04	CALENDARED: ANCHORAGE July 8, 2004 9:00 AM Courtroom 2, 2nd Floor [03-35701] (rei)
6/10/04	Filed original and 15 copies Drug Policy Alliance's amicus brf of 31 pages. [03-35701] (jr)
6/10/04	Filed original and 15 copies AK School Boards's amicus brf of 33 pages; served on 12/12/03. [03-35701] (jr)
6/10/04	Filed order (Deputy Clerk: hh) motion for aples Deborah Morse and Juneau School Board to strike portions of aplt's excerpts of record is DENIED. [03-35701] (jr)
7/8/04	ARGUED AND SUBMITTED TO Cynthia H. HALL, Andrew J. KLEINFELD, Kim M. WARDLAW [03-35701] (jmr)
3/10/06	FILED OPINION: VACATED and REMANDED. (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. Cynthia H. HALL; Andrew J. KLEINFELD, author; Kim M. WARDLAW.) FILED AND ENTERED JUDGMENT. [03-35701] (ru)

3/26/06	Filed original and 50 copies aples petition for panel rehearing and petition for rehearing en banc 18 p.pages, served on 3/22/06 PANEL/ACTIVE JUDGES/INTERESTED SENIOR JUDGES [03-35701] (crw)
4/18/06	Filed order (Cynthia H. HALL, Andrew J. KLEINFELD, Kim M. WARDLAW,): The petition for rehearing and the petition for rehearing en banc are DENIED. [5764547-1] [03-35701] (bb)
4/25/06	Filed Deborah Morse, Juneau School Board additional citations, served on 4/21/06 (PANEL) [03-35701] (bb)
4/27/06	MANDATE ISSUED costs taxed against aple for $238.04 [03-35701] (crw)
5/2/06	Filed Appellant Joseph Frederick's application for attorney(s)' fees in the amount of $48,872.00 served on 4/27/06 (PANEL) [5811540] [03-35701] (bb)
7/17/06	Received letter from the Supreme Court dated 7/12/06 re: extension of time to file a petition for a writ of certiorari. [03-35701] (bb)
9/5/06	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-278 filed on 8/28/06. [03-35701] (bb)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CIVIL DOCKET NO. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

RELEVANT DOCKET ENTRIES
IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ALASKA

04/25/2002	1-1	Complaint filed.
06/24/2002	7-1	DEF 1-2 Answer to Complaint.
12/02/2002	13-1	DEF 1-2 motion for partial summary judgment re-immunity w/att exhibits and declaration.
12/03/2002	14-1	DEF 1-2 motion for partial summary judgment re immunity from punitive damages under Alaska law.
01/06/2003	16-1	PLF 1 opposition to DEF 1-2 motion for partial summary judgment re immunity. (13-1), DEF 1-2 motion for partial summary judgment re immunity from punitive

		damages under Alaska law (14-1) w/ att exhs.
01/22/2003	18-1	PLF 1 motion for summary judgment as to entitlement to injunctive and declaratory relief w/ att memo and exhs.
01/24/2003	19-1	DEF 1-2 reply to opposition to DEF 1-2 motion for partial summary judgment re immunity (13-1) and DEF 1-2 motion for partial summary judgment re immunity from punitive damages under Alaska law w/ att declarations. (14-1)
02/21/2003	21-1	DEF 1-2 motion [Cross] for summary judgment on the merits;
02/21/2003	21-2	DEF 1-2 opposition to PLF 1 motion for summary judgment as to entitlement to injunctive and declaratory relief w/att memo and exhs. (18-1)
03/12/2003	22-1	PLF 1 opposition to DEF 1-2 motion [Cross] for summary judgment on the merits w/att exhs; (21-1)
03/12/2003	22-2	PLF 1 reply to opposition to PLF 1 motion for summary judgment as to entitlement to injunctive and declaratory relief w/att exhs. (18-1)

03/28/2003	23-1	DEF 1-2 reply to opposition to DEF 1-2 motion [Cross] for summary judgment on the merits (21-1) w/ att exhs.
03/28/2003	24-1	DEF 1-2 Request for Oral Argument re: PLF 1 mot for sj as to entitlement to injunctive and declaratory relief (18-1), DEF 1-2 cross-mot for sj on the merits (21-1).
05/12/2003	28-1	DEF 1-2 Stipulation withdrawing request for oral argument.
05/12/2003	28-2	Clerk's Notice approving stip w/drwing req for o/a (28-1).
05/27/2003	29-1	JWS Order granting motion for partial summary judgment re immunity (13-1), motion for partial summary judgment re immunity from punitive damages (14-1); plf's mot at #18 probably should be denied & defs' x-mot for SJ at #21 probably should be denied in part & granted in part. cc: cnsl
05/29/2003	30-1	JWS Minute Order approving stip w/drwing req for o/a; 6/10/03 o/a at Anchorage is vacated. cc: cnsl
05/29/2003	31-1	JWS Minute Order denying mot for sj as to entitlement to injunctive and declaratory (18-1); granting mot [cross] for sj on the merits (21-1). cc: cnsl

05/30/2003	32-1	JWS Judgment that plf take nothing from defs and that defs recover their costs from plaintiff. cc: cnsl, O&J file
05/30/2003	32	JUDGMENT that plaintiff take nothing from defendants and that defendants recover their costs from plaintiff. (JAG) Additional attachment(s) added on 5/3/2006 (LSC,). (Entered: 12/28/2005)
07/17/2003	42-1	Plf 1 appeal to 9CCA of (32-1) filed 05/30/2003. cc: cnsl, Judge, 9CCA w/CADS & Representation Statement
07/17/2003	42	NOTICE OF APPEAL as to 32 Judgment by Joseph Frederick. (JAG) (Entered: 12/28/2005)
03/31/2006	55	ORDER of USCA as to [42] Notice of Appeal filed by Joseph Frederick. Costs shall be taxed against Appellees. (LSC) (Entered: 04/04/2006)
05/03/2006	56	USCA JUDGMENT as to [42] Notice of Appeal filed by Joseph Frederick. the judgment of said District Court in this cause be, and hereby is vacated and remanded. (Attachments: # 1 Opinion)(LSC,) (Entered: 05/03/2006)

II. PLEADINGS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

[Filed: Apr. 25, 2002]

COMPLAINT

Jurisdiction and Venue

1. The Plaintiff, Joseph Frederick, seeks redress for violations of his federal civil rights under 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, and to his civil rights under state law as set out below. This court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1343 (civil rights jurisdiction); 28 U.S.C. § 2201(a) and § 2202 (declaratory relief); and 28 U.S.C. § 1367 (supplemental jurisdiction over state law claims).

2. This court has personal jurisdiction over all parties.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). All events set out below occurred within

the District of Alaska and all parties are resident of the District of Alaska.

Factual Allegations

4. The plaintiff, Joseph Frederick, is a resident of Juneau, Alaska, and a senior at Juneau-Douglas High School.

5. At all times relevant to this complaint, the Plaintiff was 18 years old and therefore an adult under Alaska Law.

6. Defendant Deborah Morse is and was at all times relevant to this complaint the principal of Juneau Douglas High School.

7. The Defendant Juneau School Board is a subdivision of the City and Borough of Juneau, a local government, and is the body responsible for policies and governance of the public schools in the Juneau School District.

8. On January 24, 2002, the Olympic Torch Relay was run through the public streets of Juneau, Alaska.

9. The Olympic Torch Relay was an event sponsored by the U.S. Olympic Committee, the Coca-Cola Company, and Chevrolet, and their local affiliates.

10. The route of the Relay on January 24th took it through several parts of Juneau, including along a portion of Glacier Avenue that runs between Juneau Douglas High School and a residential neighborhood.

11. Prior to the arrival of the Relay, teachers at the High School were given the option of releasing their students so they could view the Relay pass. A number of teachers did so.

12. Among the students released by their teachers, most viewed the Relay from the public sidewalk on the High School side of Glacier Avenue. Some left school grounds and went to the other side of the street, the residential side. Other

students left school grounds and went downtown to eat at McDonald's.

13. Prior to the arrival of the Relay on Glacier Avenue, Joseph Frederick arrived in the area in his car and parked along a public street off of Glacier Avenue. He did not enter school grounds before the Relay arrived.

14. As the Relay approached the area, snowball fights broke out among the students and then bottles of Coca-Cola, handed out by one of the Relay sponsors, were thrown. Joseph was not among the students throwing things.

15. As the Relay approached him, Joseph stood on the public sidewalk on the residential neighborhood side of Glacier Avenue.

16. As the Relay reached his position, Joseph and a number of other persons displayed a banner reading, "Bong Hits 4 Jesus". Joseph held one end of the banner. Joseph and the other students holding the banner remained silent while displaying the banner.

17. Defendant Morse saw the banner from her standpoint on the sidewalk near the High School and immediately walked across the street to the location of the banner on the public sidewalk.

18. Defendant Morse then demanded that the persons holding the banner drop it.

19. Joseph responded by asking her about his right of free speech, upon which she seized the staff holding one end of the banner out of Joseph's hands.

20. The other persons holding the banner then dropped it, upon which defendant Morse rolled it up and took it, telling Joseph to report to her in her office.

21. Joseph went to his car to retrieve his books and immediately went to his next class, where he informed the teacher that he was there but had to go to the principal's office.

22. At the principal's office, defendant Morse told Joseph that she was suspending him from school for five days.

23. Joseph respectfully protested the suspension and quoted Thomas Jefferson on civil liberty to her, whereupon she increased the suspension to ten days.

24. Joseph appealed the suspension to the Superintendent of Schools, who held a hearing at which defendant Morse testified:

a) she seized the banner and gave Joseph the suspension because she thought the banner was encouraging illegal drug use;

b) she would not have seized the banner if it had advocated legalizing drug use; and

c) she conceded that the banner was not obscene, was not offensive to minorities, and did not advocate violence;

d) she was unable to state in any way in which the display of the banner disrupted classroom instruction or interfered with the educational process.

25. At the hearing, Joseph testified that the banner was not intended to advocate drug use, but was intended to be a humorous parody and to see whether the school administration would try to suppress free speech outside of school grounds.

26. The Superintendent modified the suspension to eight days but upheld the seizure of the banner and the rest of the suspension.

27. Joseph appealed the suspension to the defendant Juneau School Board, which upheld it without explanation

28. As a result of the seizure of the banner and the disciplinary actions taken against him, Joseph Frederick has suffered a direct deprivation of his constitutional right of free

speech and expression and a direct deprivation of his right to a public education; and has been further damaged by having a permanent disciplinary record imposed on him, by emotional distress, humiliation, loss of enjoyment of life, and mental anguish.

Count I – Violations of Federal Constitutional Rights

29. All previous paragraphs are incorporated herein.

30. The First Amendment to the United States Constitution guarantees to all persons, including to all high school students, freedom of speech and freedom of assembly.

31. By seizing the banner, by punishing Joseph Frederick for displaying the banner, and by punishing him for quoting Thomas Jefferson on civil liberties, the defendants violated his right to free speech under the First Amendment to the United States Constitution and deprived him of his constitutional civil rights in violation of 42 U.S.C. § 1983.

Count II – Violations of State Constitutional Rights

32. All previous paragraphs are incorporated herein.

33. Article I, Section 5, of the Constitution of the State of Alaska guarantees to all persons the right to freely speak, write, and publish on all subjects.

34. Article VII, Section 1, of the Constitution of the State of Alaska guarantees to all school-age persons in Alaska the right to public education.

35. By punishing Joseph Frederick for displaying the banner and for quoting Thomas Jefferson on civil liberties, the defendants violated his right to freely speak under the Constitution of the State of Alaska.

36. By suspending Joseph Frederick from school for displaying the banner for and for quoting Thomas Jefferson

on civil liberties, the defendants violated his right to a public education under the Constitution of the State of Alaska.

Prayer for Relief

Therefore, Plaintiff demands judgment and relief as follows:

A. A declaration that the Defendants have violated the rights of the Plaintiff under the First Amendment to the United States Constitution; Article I, Section 5, of the Constitution of Alaska; and Article VII, Section 1 of the Constitution of Alaska;

B. A mandatory injunction prohibiting Defendants from further violating the same rights of the Plaintiff or similarly situated persons;

C. A mandatory injunction requiring Defendants to remove all reference to discipline based on the above incidents from his student records and to amend his grades to ameliorate any academic disability suffered as a result of the punishments complained of above;

D. An award of compensatory damages against all Defendants;

E. An award of punitive damages against all Defendants;

F. An award of attorney fees and costs of suit pursuant to 42 U.S.C. §1988 and Federal Rule of Civil Procedure 54; and

G. Such other relief as the court may deem proper.

Dated: April 25, 2002

s/ Douglas K. Mertz
Douglas K. Mertz
Attorney for the Plaintiff
Cooperating Attorney, Alaska Civil Liberties Union

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

[Filed: June 20, 2002]

ANSWER OF DEFENDANTS
DEBORAH MORSE AND JUNEAU SCHOOL BOARD

Defendants Deborah Morse and Juneau School Board answer the complaint and allege affirmative defenses as follows:

1. This paragraph purports to characterize plaintiff's claim and otherwise alleges legal conclusions as to which no response is required.

2. This paragraph alleges legal conclusions as to which no response is required.

3. The first sentence of this paragraph alleges a legal conclusion as to which no response is required. Defendants admit the second sentence of this paragraph.

4. Defendants are without knowledge or information sufficient to form a belief as to whether Joseph Frederick is a resident of Juneau, Alaska. Defendants admit that plaintiff was a senior at Juneau-Douglas High School at the time of the events alleged in the complaint and affirmatively allege that plaintiff has graduated and is no longer a student at Juneau-Douglas High School.

5. Admitted.

6. Admitted.

7. Defendants admit that the Juneau School Board is responsible for policies and governance of the public schools in the Juneau School District. The remaining allegations of this paragraph state legal conclusions as to which no response is required.

8. Admitted.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

10. Admitted.

11. Defendants admit that Juneau-Douglas High School teachers were given the option of permitting their students to attend the relay as a class while under the teacher's supervision, and that a number of teachers elected to do so. Except to the extent admitted, the allegations of this paragraph are denied.

12. With respect to the first and second sentences of this paragraph, the defendants deny that students were released by their teachers, admit that many students permitted to observe the relay did so from the sidewalk on the high school side of Glacier Avenue, and that some students also observed from the sidewalk opposite the high school, and deny the remaining allegations of the first two sentences. Defendants are without knowledge or information

sufficient to form a belief as to the truth of the allegations of the third sentence of paragraph 12.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

14. Defendants admit the first sentence of paragraph 14. Defendants deny the second sentence of this paragraph to the extent that it alleges that plaintiff was not in the group of students who were throwing snowballs and bottles. Defendants are without knowledge or information sufficient to form a belief as to whether plaintiff personally threw snowballs or bottles.

15. Admitted, except that, due to snow conditions, defendants do not know whether Joseph was standing on the public sidewalk or in the street.

16. Admitted.

17. Admitted, except that, due to snow conditions, defendants are unable to state whether those holding the banner were on the public sidewalk, in the street, or both.

18. Admitted.

19. Defendants admit that plaintiff questioned defendant Morse's authority over him while standing on a public sidewalk, that she took the banner out of Joseph's hand, and deny the remaining allegations of this paragraph.

20. Defendants admit that the persons holding the banner dropped it and that defendant Morse rolled it up, and that she directed plaintiff to return to her office with her. Except to the extent admitted, the allegations of this paragraph are denied.

21. Defendants admit that plaintiff went to his next class, deny that he immediately informed his teacher that he had to go to the principal's office, and are without knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

22. Denied.

23. Denied.

24. Defendants admit that plaintiff appealed the suspension to the superintendent of schools and that the defendant Morse participated and spoke at the appeal; defendants admit that plaintiff was suspended for a variety of reasons, as stated in the notice of suspension, including displaying a banner that defendant Morse believed encouraged illegal drug use; defendants admit that Morse stated that she probably would not have seized the banner if it had contained a political statement, including a statement advocating legalizing drug use; defendants admit that defendant Morse conceded that the banner was not obscene, offensive to minorities, and did not advocate violence; defendants deny that defendant Morse stated or implied that display of a banner advocating illegal drug use was not disruptive to classroom instruction or that it would not interfere with the educational process. Except to the extent admitted, the allegations of paragraph 24 are denied.

25. Defendants admit that in the course of the appeal to the superintendent, plaintiff stated that the banner was not intended to advocate drug use, and deny the remainder of the allegations of this paragraph.

26. Admitted.

27. Denied.

28. This paragraph states a conclusion of law, as to which no response is required. To the extent that response is required, defendants deny the allegations of this paragraph except that they admit that plaintiff's suspension is reflected in his disciplinary record.

29. Defendants incorporate by reference their responses to all previous paragraphs.

30. This paragraph states a conclusion of law as to which no response is required.

31. Defendants admit that defendant Morse took the banner from plaintiff, deny that he was punished just for displaying the banner, and deny that he was punished for quoting Thomas Jefferson on civil liberties. The remainder of this paragraph alleges a conclusion of law as to which no response is required. To the extent that further response is required, defendants deny the allegations of paragraph 31.

32. Defendants incorporate their responses to all previous paragraphs.

33. This paragraph states a conclusion of law as to which no response is required.

34. This paragraph states a conclusion of law as to which no response is required.

35. Defendants deny that plaintiff was punished solely for displaying the banner and deny that he was punished for quoting Thomas Jefferson on civil liberties. The remainder of this paragraph states a legal conclusion as to which no response is required.

36. Defendants deny that plaintiff was punished solely for displaying the banner and deny that he was punished for quoting Thomas Jefferson on civil liberties. The remainder of this paragraph states a legal conclusion as to which no response is required.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim on which relief may be granted.

2. Plaintiff has failed to mitigate his damages.

3. The School Board is immune from any award of damages pursuant to the Eleventh Amendment to the Constitution of the United States.

4. Defendant Morse has qualified immunity from any award of damages in that there is no clearly settled rule of

law prohibiting a high school principal from disciplining a student under her care and supervision for displaying messages that a reasonable person would understand to advocate use of illegal drugs.

5. The School Board is immune from any award of punitive damages.

6. All defendants are immune from state law damage claims for their discretionary actions pursuant to AS 9.65.070 (d)(2).

7. All defendants are immune from state law damage claims for their actions in enforcing an approved school disciplinary and safety program pursuant to AS 14.33.140.

PRAYER FOR RELIEF

Wherefore, defendants request that the Court enter judgment as follows:

1. That the complaint be dismissed, with prejudice, and that plaintiff take nothing;

2. That the Court award defendants their attorneys' fees and costs of suit pursuant to 42 U.S.C. § 1988, Federal Rule of Civil Procedure 54, and Alaska Rules of Civil Procedure, Rule 82; and

3. That the Court grant such other and further relief as it may deem appropriate.

Dated this 20 day of June, 2002, at Juneau, Alaska.

Respectfully submitted,
DAVID C. CROSBY, P.C.

s/ David Crosby
David C. Crosby
Alaska Bar No. 7106006
Attorney for Defendants

III. DECLARATIONS AND AFFIDAVITS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DECLARATION OF DEBORAH MORSE

I, DEBORAH MORSE, under penalty of perjury do swear and affirm that the following statement is true and correct to the best of my knowledge.

1. I am one of the named defendants in this proceeding. Since July 2000, I have been the principal of Juneau-Douglas High School ("JDHS") in the Juneau School District ("District"). I make this declaration in support of defendants' Motion for Partial Summary Judgment.

DISTRICT POLICY RE DISPLAY OF MESSAGES
ADVERTISING OR ADVOCATING
USE OF ILLEGAL DRUGS

2. Use of drugs and alcohol by students is a serious problem in all secondary schools, including JDHS. The Juneau School Board has mandated programs for drug and alcohol education (Board policy 1422), as well as

comprehensive intervention with and discipline of students involved with illegal substances (Board policy 5530).

3. Consistent with the educational mission of the school district, the Juneau School Board by policy prohibits dissemination of messages that might encourage students to use drugs or alcohol. Specifically:

- Board policy 5511 provides that "[C]lothing that ... advertises or advocates the use of illegal drugs, alcohol or tobacco is prohibited as inconsistent with the District's educational mission and disruptive to the District's educational program."
- Board policy 5520 "prohibits any assembly or public expression that ... advocates the use of substances that are illegal to minors."
- Board policy 5721 prohibits distribution or display of materials that "advocate the use by minors of any illegal substance or material."
- The District's responsibilities as in loco parentis also require that messages advocating, or promoting use of illegal substances be removed, to the extent possible, from the learning environment, including the environment at school-sanctioned activities.

4. Although Board policies 5511, 5520 and 5721 apply to school premises, Board policy 5850 provides that "[P]upils who participate in approved social events and class trips are subject to District rules for student conduct; infractions of these rules will be subject to discipline in the same manner as infractions of rules during the regular school program."

5. Board policy 5600 gives me "the authority to take such means as may be reasonably necessary to control the disorderly conduct of students in all situations and in all places where such students are within the jurisdiction of the

school district" -- including at approved social events and field trips. In addition, Board policy regulations 5520R require all students to comply "with reasonable directives ... of authorized school personnel during any period of time when he or she is properly under the authority of school personnel."

6. I have attached copies of all of the Board policies and regulations referenced in this declaration. Attachments 1 – 8. These policies were adopted by the Board pursuant to a public process and are subject to review pursuant to a collaborative process that includes students, parents, teachers, and others responsible for student safety. Board policy 7430.

7. The JDHS Handbook and Disciplinary Plan ("the Handbook") incorporates the Board discipline policy and prescribes the level of penalties. Attachment 9. The Handbook was developed through a collaborative process involving students, parents, teachers and administrators. Section 2.12 prohibits possession or display of offensive material and clothing both during normal school hours and at school sponsored/sanctioned functions or activities outside of such hours.

JDHS PARTICIPATION IN THE OLYMPIC TORCH RELAY

8. At some time prior to January of 2002, the United States Olympic Committee announced plans for a relay of the Olympic Torch through Juneau along a route that would take the Torch bearers down Glacier Avenue in front of JDHS. The relay was to be filmed by TV camera crews.

9. Believing the event to have educational value and significance to the community, the District, and I as chief administrator of JDHS, decided to permit staff and students to participate in the Torch relay as an approved social event

or class trip. I was in charge of preparations for the high school. These preparations included:

a. The high school pep band, under faculty supervision, played as the Torch passed JDHS.

b. The high school cheerleaders, under faculty supervision, were out in uniform to greet the Torch-bearers as they passed JDHS.

c. High School teachers were given the option of observing the passing of the Torch with their classes. Students were not "released" from school, but remained under the supervision of their classroom teachers and school administrators while observing the relay. I am not aware of any teachers that did not permit their students to observe the relay.

d. Four high school students representing various segments of the high school student body were given permission to miss class to act as Torch-bearers.

e. The District also made supervised release time and transportation available for students who were not on the relay route to participate in the event.

THE "BONG HITS FOR JESUS" BANNER INCIDENT

10. At around 9:30 a.m. on January 24, 2002, the high school student body lined both sides of Glacier Avenue in front of the high school. Students were permitted to stand on either side of the street. Many students chose to view the relay from vantage points on campus because the campus is higher than street level and enabled them to see over the heads of students standing on the sidewalk. I was stationed directly in front of the high school supervising crowd control. I was assisted by other administrators, classroom teachers and school staff. I passed back and forth across the street on numerous occasions, as required, in order to maintain proper supervision of the student body.

11. It has always been my understanding that the school district is responsible for the safety and good conduct of students attending school-sponsored events that are supervised by District personnel, regardless of where those events take place, and that this is especially so if the event takes place during the school day. This belief is based in part on Board Policies 5850, 5600, and 5520, which extend District rules and my enforcement authority to approved social events and field trips off campus. I specifically believe that all students observing the Olympic Torch relay in the immediate vicinity of the high school were my responsibility and under my supervision, regardless of whether or not they were physically standing on school grounds.

12. In the course of my duties, I observed high school senior Joseph Frederick standing on the opposite side of the street from JDHS with a group of students and young people. I spoke to members of this group on two occasions. The first was to investigate the throwing of snowballs and beverage bottles that originated from the vicinity of this group.

13. As the camera truck and relay runner passed, members of Frederick's group unfurled a large banner bearing the words "Bong Hits for Jesus." See attachment 10. The banner was in full view and easily readable by students on the high school side of the street, including a large number of students who were viewing the relay from on-campus locations.

14. To my knowledge, a "bong" is a slang term for a water-cooled pipe or pipe-like device commonly used for smoking marijuana. To my knowledge, the term "hit" is slang for inhaling marijuana. I believe that the reference to a "bong hit" would be widely understood by high school students and others as referring to smoking marijuana.

15. I immediately approached the group and asked them to put the banner down. Most of the students immediately dropped the banner. Frederick, however, refused and asked

"What about our First Amendment rights?" I told him that the banner was not appropriate for displaying at a school function. He objected that he was not on campus and that I therefore had no jurisdiction over him.* I responded that he was participating in a school activity, and that I did have such authority. I confiscated the banner and requested that Frederick come with me to my office. Instead, he turned and walked in the opposite direction. When he didn't come to my office, I looked up his class schedule, went to his class and accompanied him to my office.

16. I told Frederick and the other members of his group to put the banner down because I felt that it violated the policy against displaying offensive material, including material that advertises or promotes use of illegal drugs. I also believed that display of the banner would be construed by students, District personnel, parents and others witnessing the display of the banner, as advocating or promoting illegal drug use and inconsistent with the District's basic educational mission to promote a healthy, drug free lifestyle. I felt that failure to react to the display of such a banner at a school-sanctioned event would appear to give the District's imprimatur to that message and would be inconsistent with the District's responsibility to teach students the boundaries of socially-appropriate behavior.

17. During the interview in my office, I told Frederick that I had asked him to drop the banner because I thought the reference to "bong hits" would be construed as advocating drug use. He denied that his sign had this meaning, or any

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* I later learned that Frederick had not reported to his homeroom class prior to attending the relay because his car was allegedly stuck in s snow bank. I did not know this at the time, but it would not have made any difference to my decision to confiscate the banner.

meaning at all, and went so far as to invent an acronym for "bong hits," which he wrote out on a piece of paper. Attachment 11.

18. I issued a ten day suspension to Frederick for multiple infractions, including violation of the policy requiring obedience to reasonable staff directives and the policy against displaying offensive materials. Attachment 12.

DATED this *26* day of November, 2002, at Juneau, Alaska.

s/ Deborah Morse
Deborah Morse

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

AFFIDAVIT OF JOSEPH BAKER FREDERICK

I, Joseph Baker Frederick, first duly sworn, do hereby testify as follows:

1. I am the plaintiff in this lawsuit.

2. In January of 2002, I was eighteen years old and living in Juneau, Alaska. I had already met all my high school graduation requirements and was taking a few courses to finish up my senior year at Juneau Douglas High School.

3. Sometime in that month, a few friends and I heard that the Olympic Torch Relay would be running through Juneau. It was an event, sponsored by Coca-Cola and other businesses, to promote the Winter Olympics in Salt Lake City, in which the Olympic torch would be handed off from runner to runner as they went through Juneau, from which the flame would then be taken to another city, and eventually to Salt Lake City.

3. My friend and I got the idea that we would show a humorous banner when the runners passed by. We figured we would show the banner at some location where there were TV cameras taping the runners. We decided that the banner should say, "Bong Hits 4 Jesus." I am not sure where we got

this phrase, but I know it is used on a popular brand of snowboard. Our intention was to do a humorous parody. Since that time I have seen the website of a group called "Bong Hits for Jesus" which does the same sort of thing at the New Orleans Mardi Gras every year, namely parodying and making fun of fundamentalist religious groups who protest against the Mardi Gras revelry. That fits right in with what we were trying to do. We were not trying to deliver a religious message or any message related to drug use. I know the School District now claims we were trying to make some sort of statement about drug use, but that it not true at all. It was a parody, an attempt to be funny. We were not advocating anything. We thought we had a free speech right to display a humorous saying, and that's all we were doing. The content of the banner was less important to us than the fact that we were exercising our free speech rights to do a funny parody.

4. The Torch relay was scheduled for January 24, 2002. So just before that day, some friends and I made the banner, and on the 24th we took it to a place where we knew the relay would take place and where there were going to be TV cameras. We chose a place on Glacier Avenue, on the published route of the relay, that was across from the public swimming pool. The pool is adjacent to the high school. So we were on the opposite side of the street from the high school. We purposely avoided the high school grounds itself. We wanted to be on a public sidewalk but not on school grounds so there would be no reason for the school to bother us and so it would be clear that we had free speech rights.

5. That morning, my car got stuck in the driveway so I missed my first class of the day. By the time we got the car out and drove into town, there were already people standing along the relay route, waiting for the runners. I parked several blocks away from the high school, on a public street. From there, a friend and I went directly to the spot at which we were going to display the banner. We never went onto

school grounds until after the banner was displayed and seized from us.

6. As we waited for the relay to come by, there were a lot of people, including both students and non-students, on both sides of the street. We could see some students leaving the campus and heading downtown. Some of the students who stayed waiting for the runners got a little unruly, and several snowball fights broke out. Some of the students on the high school grounds threw snowballs at a police car driving by. There were several fights. I did not participate in the snowball throwing or the fights, nor did anyone else waiting with the banner with me.

7. The first part of the relay was a Coca-Cola truck which handed out small banners advertising Coca-Cola and (in smaller print) the Torch Relay. People on the truck were handing out plastic bottles of Coke. After that truck went by, several students started throwing the Coke bottles at each other. We could see some school officials trying to stop them, without much luck. My group of friends and I just quietly waited and did not throw anything or in any way act unruly.

8. When the first runner came toward us, and the TV camera (mounted on a truck just in front of the runner) was in front of us, we unfurled the banner so it would be visible to the camera. Almost immediately, the high school principal, Ms. Morse, came toward us across the street, shaking her head. At this point at least two of us were holding the banner and several other people were standing with us. Some of us were students but I know at least one, perhaps more, of those with us were not students and were adults. Ms. Morse came up to me and demanded that we put the banner down. I asked her, what about my free speech rights? We're not on school grounds. (I do not recall the exact words, but it was approximately that; I said it quietly and respectfully.) She told me to take it down, and when I said, "What happened to the Bill of Rights. This is our right to do this. It's a free

speech exercise," she said, "Not here it's not," and she grabbed the banner out of my hands, and then the others holding the banner dropped it. She crumpled up the banner and ordered me to come to her office.

9. I then got my books from my car and went into the high school, stopping first at my physics class to let the teacher know I was there but had to go to the principal's office. At that point, I met an assistant principal and went with him to the principal's office.

10. At her office, the principal told me that I was suspended from school for five days for disruptive behavior. I asked what was disruptive, and they said I was defiant as well, because I was questioning why they were suspending me. I asked again about my First Amendment rights, and I quoted Jefferson (I think he was paraphrasing Voltaire), that "Free speech cannot be limited without being lost." Her response was to tell me to stop arguing because that just got me an additional five days suspension. They also charged me with truancy because I missed the first class that morning, even though I had an excuse and almost no one is ever charged with truancy, even if they intentionally skip classes.

11. At all times I was calm and respectful with her. The only "arguing" I did was what I just described, namely raising again the question of whether I had a First Amendment right to display the banner and quoting Jefferson. I know that of all of us who were disciplined for holding the banner, I was the only one who quoted Jefferson to her and that I was the only one who got the additional five days suspension.

12. In the same meeting in the principal's office assistant prinicipal [sic] Dale Staley told me that the Bill of Rights doesn't apply to students. When I asked him, "What about the Bill of Rights? Doesn't that still exist?," he said "not until you graduate," and "not in schools." Ms. Morse was present when he said it.

12. We had a hearing with the Superintendent of Schools at which, Ms. Morse testified that she didn't remember whether I made the quotation from Jefferson. But I definitely did, and that was what caused her to immediately give me an extra five days' suspension.

13. After I served the suspension and returned to classes, a few students mentioned the banner incident, but no one made a big deal of it. There was no disruption of any classes because of it, and to my knowledge it wasn't even discussed in classes. No student or faculty members ever told me they saw the banner as advocating drug use or as saying anything about religion. I can say from my own experience that the high school administration allows t-shirts with alcohol or drug message (such as "You Go to High School, I Go to School High") and advertising of plays with a drug theme. We used to see these things regularly. Our banner was singled out, I believe, not because it actually caused any disruption or advocated drug use (it didn't do either of those things) but because the principal found it personally embarrassing or offensive to her. I was punished because I advocated my free speech rights, not because I did anything harmful to the school.

14. I graduated with my class in May of 2002. I am now a student at Stephen F. Austin State University, in Nacadoches, Texas.

Further affiant sayeth naught.

s/ Joseph Frederick

SUBSCRIBED AND SWORN before me this *30th* day of *December, 2002*.

s/ [illegible]
Notary Public for the State of Alaska
My commission expires 9/30/05

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

AFFIDAVIT OF MELINDA MADSEN

I, Melinda Madsen, first duly sworn, do hereby testify as follows:

1. I was a sophomore in JDHS last year when the Olympic Torch Relay was run through Juneau.

2. On the day of the torch relay, my teacher released us to go see the relay, but we did not have to stay together or stay with the teacher. The area outside the school was crowded and chaotic. There were kids in the street running back and forth, and there were snowball fights. After plastic Coke bottles were handed out, a lot of the bottles were thrown back and forth. I saw some of my classmates go to their cars. It was easy to slip away. I noticed a few other students did not come back to class after the relay was over, and the teacher noticed their absence but they didn't get into trouble.

3. When the relay came by, I had left the school grounds and was standing near Joe Frederick on the sidewalk on the other side of the street. I saw the banner unfurled and I stood with it. I saw the Principal come over and take the

banner down. Those of us with the banner were not fighting or throwing anything.

4. After the relay there was some discussion of the banner incident in class. But there was no disruption of classes and not even enough discussion to keep anyone from doing classroom work.

5. I didn't think the message on the banner promoted illegal drug use. I'm not sure what it meant, but I didn't think it was suggesting drug use.

Further affiant sayeth naught.

s/ Melinda Madsen

SUBSCRIBED AND SWORN before me this *31st* day of *December, 2002*.

s/ [illegible]
Notary Public for the State of Alaska
My commission expires 9/30/05

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

AFFIDAVIT OF MAKANA FIELD

I, Makana Field, first duly sworn, do hereby testify as follows:

1. I was a sophomore at Juneau Douglas High School when the Olympic Torch Relay was run in Juneau in January, 2002.

2. My friend Joe Frederick and I got the idea of displaying a banner when the runners came by. I'm not sure where we got the phrase, "Bong Hits 4 Jesus," but I know we thought it was funny, so that's why we used it. It didn't have any particular meaning. It definitely wasn't meant to say anything encouraging drug use or to say anything about religion. I don't know any students who took it to have a drug meaning, though there was one student who thought we were making a comment about religion.

3. On the day of the relay, Joe and I came in late due to getting stuck in the snow. We arrived in town and parked near the cemetery and walked to a place across from the high school. We never did go on school grounds before the relay passed. I carried the banner to the place where we waited.

There was a group of us, including one non-student, Eli Geil, with the banner.

4. When the runner came by, we unfurled the banner. Ms. Morse, the principal, ran across the street and said something to Joe which I didn't hear, and she grabbed the banner and crumpled it up. I heard Joe protest something about not being on school grounds and this being the United States. At that point I left.

5. Later on I went to school. There was some discussion among the students of the banner, but not much. No one discussed the Olympic relay or the Olympics, including teachers, so I could not see any way in which the event would be considered an educational or school-related event. There were no assignments related to the Olympics that I ever heard of, and no discussions of it.

Further affiant sayeth naught.

s/ Makana Field

SUBSCRIBED AND SWORN before me this *13th* day of *January, 2003*.

s/ [illegible]
Notary Public for the State of Alaska
My commission expires 9/30/05

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

AFFIDAVIT OF MICAELA F. CROTEAU

I, Micaela Fowler Croteau, first duly sworn, do hereby testify as follows:

1. In January, 2002, I was a sophomore at Juneau Douglas High School.

2. On the day on which the Olympic Torch Relay was to be run through Juneau, the school allowed students to go out to the street to watch it. It was not a fieldtrip, as no fieldtrip form had to be filled, and parental consent was not required. We were not required to stay together as a class, and I think only the gym class stayed together. We were just told to come back to our next class at a particular time.

3. I went across Glacier Avenue to the non-school side and stood with Joe Frederick and his friends. I was with them when they unfurled the banner as the runner approached. I know that at least one of the people holding the banner was Eli Geil, who was not a student.

4. Just as the banner was unfurled, there was a lot of noise from students fighting, I believe one student (not one of the group with the banner) had hit another over the head with a water bottle. There were also snowball fights going on. The

group with the banner was not fighting or throwing things, just standing there with the banner.

5. After we had all gone back into school following the event, we went right to our classwork. I'm not aware of any discussion that any class held about the relay itself or the Olympics. There was quite a bit of talk among the students about what the school administration did to Joe Frederick. But there was no disruption that I was aware of, of any school classes because of the banner.

6. I am not sure what Joe meant by the saying on the banner. I just took it to be an attempt by Joe to be outrageous or funny, but no one took it seriously as saying anything about drugs or about religion.

Further affiant sayeth naught.

s/ Micaela F. Croteau

SUBSCRIBED AND SWORN before me this *19th* day of *January, 2003*.

s/ [illegible]
Notary Public for the State of Alaska
My commission expires 9/30/05

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

AFFIDAVIT OF SARA CROTEAU

I, Sara Croteau, first duly sworn, do hereby testify as follows:

I was a student at Juneau Douglas High School. In January of 2002, when the torch relay was being run near our school, the teacher announced that we could go watch it. Some students did, others did not, and the teacher made no effort to keep those of us who did go out together.

We stood in the snow for a long time waiting for the torch to come by. Many people got bored and left. The school administrators weren't stopping any of the people who left. Many others entertained themselves by throwing snowballs at cars, kids, and teachers. After the Coke truck came by, people were throwing Coke bottles at each other. It was chaos. I could have done whatever I wanted.

Afterwards, a lot of students talked about what had happened with Joe and the banner. None of us really knew what he meant by the banner. I don't think the banner disrupted classes or caused problems in the school in any way.

Further affiant sayeth naught.

s/ Sara Croteau

SUBSCRIBED AND SWORN before me this *20th* day of *January, 2003*.

s/ [illegible]
Notary Public for the State of Alaska
My commission expires 9/30/05

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

SUPPLEMENTAL DECLARATION OF DEBORAH MORSE

DEBORAH MORSE declares under penalty of perjury as follows:

1. I am the Principal of Juneau-Douglas High School and a named defendant in this litigation. I make this declaration of my own personal knowledge in support of Defendants' Motion for Partial Summary Judgment re Immunity.

2. I have carefully reviewed Joseph Frederick's affidavit of December 30, 2002. I disagree with a number of the statements made therein, some of which are flatly false.

3. With respect to the statement in paragraph 3 that Frederick was attempting a "funny parody," Frederick repeatedly refused to tell me what was meant by the phrase "Bong Hits 4 Jesus." He said he had seen the phrase on a snowboard or snowboarder apparel. At no time did he state that it was intended to be either "funny" or a "parody," either of which, of course, would have meant that the phrase had some meaning, at least to him. This he denied.

4. With respect to paragraph 4, Frederick states that he was standing "across from the public swimming pool" at the time that he displayed the banner. This is false. The position in which he was standing is clearly identifiable from the houses in the background. It is directly across from the high school.

5. In paragraph 6, Frederick states that he and his friends did not participate in throwing snowballs or fighting. While I am unable to identify any specific student that was throwing snowballs or pop bottles, I can state that it was coming from the vicinity of Frederick and those who later assisted him in holding the banner. One of my concerns was that Frederick's banner would contribute to what was already becoming an unruly situation.

6. In paragraph 8, Frederick quotes me as saying "Not here it's not" in response to his assertion that what he was doing constituted an exercise of free speech. I told him that the message was inappropriate for a school function and asked him to put it down. I did not engage him in the niceties of first amendment law.

7. In paragraph 10, Frederick states that I doubled the time of his suspension because he quoted Thomas Jefferson saying "Free speech cannot be limited without being lost." I do not recall Frederick quoting that statement to me although he may have said something to that effect when we were on the sidewalk. I am sure that he did not use the quote when we were in my office. It is simply false that I doubled the time of his suspension for quoting Thomas Jefferson, or for any other reason. I did not ever tell Frederick that he was going to be suspended for five days and then later increase that time to ten days. After questioning Frederick and consulting the student handbook and Frederick's prior disciplinary record, I determined that an appropriate length of suspension would be ten days. At no time did I ever suggest to Frederick that it would be less. The length of Frederick's suspension was based upon the fact that there were multiple infractions of the

student handbook and his defiant attitude, including his failure to obey my direction to return with me to my office.

8. In paragraph 9, Frederick states that he was on his way to the office when he was met by an assistant principal. This is false. An assistant principal (Katherine Milliron) had to go into the classroom and escort him out to the hallway.

9. In paragraph 11, Frederick states that another student or students holding the banner received only five day suspensions. It is true that one other student (Ryan Elliott) who participated in the banner incident was given five days suspension by Assistant Principal Dale Staley. Elliott was not truant at the time. Mr. Staley was dealing with Elliott at the same time that I was questioning Frederick. We did not confer prior to reaching our independent judgments concerning the appropriate length of suspension with respect to the two students. A student guilty of a Category I infraction may be assigned one to ten days of out-of-school suspension, in the discretion of the administrator handling the matter. A great deal depends on the attitude of the student. My judgment was that Frederick's conduct merited a ten day suspension, based on the number of Category II infractions. Mr. Staley reached his own independent judgment with respect to Elliott.

10. In paragraph 12, Frederick states that Assistant Principal Dale Staley said to him, in my presence, that the Bill of Rights does not exist in school and does not apply until after graduation. Mr. Staley came into my office briefly while I was dealing with Frederick. I recall a brief exchange in which Mr. Staley made some remark to the effect that students do not have the same first amendment rights as adults. Mr. Staley never said anything as foolish as the remarks attributed to him by Frederick, nor have I ever heard him express such views, which we both believe to be incorrect.

11. In paragraph 13, Frederick states that the banner incident did not cause any disruption in the high school. This is not true. It was part and parcel of the disruptive behavior that was coming from students around Frederick (if not Frederick himself), including fights, and throwing snowballs (including at least one directed at me) and pop bottles at passing cars. It also sparked a spate of pro-drug graffiti in the high school. In the period following the incident, I personally observed the following graffiti posted in the halls and grounds of the school: (1) artwork depicting a bong with "4 Jesus" beneath it; (2) the phrase "Doobies [slang for a marijuana cigarette] for Debbie, [i.e., myself]" and (3) a Ninja turtle smoking a joint. It is not true, as stated in that paragraph, that the high school administration allows students to wear t-shirts with alcohol or drug messages. Such apparel is prohibited by board policy and the student handbook. While I cannot say that every infraction is brought to my attention, when it is brought to my attention the student is required to either remove the article of clothing (if possible), turn it inside out, told never to wear the article of clothing again at school, or if the infractions are numerous, a call is made home to the parents. Adolescents being adolescents, there is always a fair amount of pushing the line to see how teachers and administrators will react (witness Frederick's behavior on the occasion in question). I am not aware, as referenced in that paragraph, of any school plays with "drug themes," in the sense that a reasonable person would take the subject matter as advocating use of illegal substances. Use of illegal substances, unfortunately, is a fact of life, and may have been dramatically depicted in one or more student productions. The school would never permit or sanction, however, any production that treated the subject jokingly, advocated illegal drug use or glorified use of illegal substances.

DATED this *22nd* day of January, 2003, at Juneau, Alaska.

s/ Deborah Morse
Deborah Morse

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DECLARATION OF DALE STALEY

DALE STALEY declares under penalty of perjury as follows:

1. I am the Assistant Principal of Juneau-Douglas High School. I make this declaration of my own personal knowledge in support of Defendants' Motion for Partial Summary Judgment re Immunity.

2. I have carefully reviewed paragraph 12 of Joseph Frederick's affidavit of December 30, 2002. In that paragraph Frederick states:

> In the same meeting in the principal's office [i.e., meeting in which Principal Deborah Morse suspended Frederick], Assistant Principal Dale Staley told me that the Bill of Rights doesn't apply to students. When I asked him "What about the Bill of Rights? Doesn't that still exist?," he said "Not until you graduate," and "not in schools." Ms. Morse was present when he said it.

3. I took no part in determining whether Frederick had violated any provisions of the student handbook. I was not

asked to, nor did I, participate in determining the discipline accorded to Frederick.

4. I was in Ms. Morse's office briefly when Frederick was present. I recall making a brief comment in response to something Frederick said to the effect that high school students do not have the same first amendment rights as adults. I did not at any time tell Frederick that the Bill of Rights does not exist in school or that it does not apply to students until after they graduate. Nor would I have made those statements, because I know them to be untrue. Part of my training as a school administrator included basic instruction in the rights of students. I know that students do have the first amendment rights, although those rights are not as extensive as might be accorded an adult in a non-school setting. Students have the first amendment right, for example, to express their views on political matters in a non-disruptive manner. School district policies, however, do not permit students to display materials advocating or glorifying use of drugs or alcohol.

5. At the same time that Ms. Morse was busy with Frederick, I was questioning another student involved in the banner incident, Ryan Elliott. Under the circumstances, I felt five days was an appropriate out-of-school suspension for Elliott's multiple Category II violations. Unlike Frederick, Elliott was not truant at the time of the incident. I arrived at my sense of the appropriate consequence without consulting with Principal Morse. I did not advise Principal Morse of my decision prior to her independent decision to suspend Frederick for ten days.

DATED this 22 day of *January*, 2003, at Juneau, Alaska.

s/ Dale Staley

Dale Staley

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DECLARATION OF GEORGE GRESS

1. George Gress declares, under penalty of perjury, as follows:

2. I am a teacher at Juneau Douglas High School. On January 24, 2002, during the time when the Olympic Torch Relay was passing by the Juneau Douglas High School, Sara Croteau was an enrolled student in my class.

3. Pursuant to the instructions of the Principal's office, I elected to let my students go out to observe the passing of the Olympic Torch as a school sponsored and supervised event.

4. The entire class went out to view the relay. Individual students were not given the option of remaining in class, nor were they released to do as they pleased. They were to watch the relay with the rest of the student body and return directly to their classrooms.

5. I did not insist that my students remain together as a group, as long as they remained with the student body viewing the relay. I did, however, assist in providing crowd control with the student body in general.

6. For the most part the student body was very well behaved while awaiting the arrival and observing the passage of the Torch. There were numerous administrators, teachers (including myself) and staff interspersed with the students. The student body was at all times under the supervision and control of the administrators, teachers and staff.

DATED this *6th* day of February, 2003, at Juneau, Alaska.

s/ George Gress

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DECLARATION OF GRETCHEN KRIEGMONT

1. Gretchen Kriegmont declares, under penalty of perjury, as follows:

2. I am a teacher at Juneau Douglas High School. On January 24, 2002, during the time when the Olympic Torch Relay was passing by the Juneau Douglas High School, Melinda Madsen was an enrolled student in my class.

3. Pursuant to the instructions of the Principal's office, I elected to let my students go out to observe the passing of the Olympic Torch as a school sponsored and supervised event.

4. The entire class went out to view the relay. Individual students were not given the option of remaining in class, nor were they released to do as they pleased. They were to watch the relay with the rest of the student body and return directly to their classrooms.

5. I did not insist that my students remain together as a group, as long as they remained with the student body viewing the relay. I did, however, assist in providing crowd control with the student body in general.

6. For the most part the student body was very well behaved while awaiting the arrival and observing the passage of the Torch. There were numerous administrators, teachers (including myself) and staff interspersed with the students. The student body was at all times under the supervision and control of the administrators, teachers and staff.

DATED this *6th* day of February, 2003, at Juneau, Alaska.

s/ Gretchen O. Kriegmont

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DECLARATION OF JANNA LELCHUK

1. Janna Lelchuk declares, under penalty of perjury, as follows:

2. I am a teacher at Juneau Douglas High School. On January 24, 2002, during the time when the Olympic Torch Relay was passing by the Juneau Douglas High School, Makana Field was an enrolled student in my class.

3. Pursuant to the instructions of the Principal's office, I elected to let my students go out to observe the passing of the Olympic Torch as a school sponsored and supervised event.

4. The entire class went out to view the relay. Individual students were not given the option of remaining in class, nor were they released to do as they pleased. They were to watch the relay with the rest of the student body and return directly to their classrooms.

5. I did not insist that my students remain together as a group, as long as they remained with the student body viewing the relay. I did, however, assist in providing crowd control with the student body in general.

6. For the most part the student body was very well behaved while awaiting the arrival and observing the passage of the T[illegible]. There were numerous administrators, teachers (including myself) and staff interspersed with the students. The student body was at all times under the supervision and control of the administrators, teachers and staff.

DATED this *6th* day of February, 2003, at Juneau, Alaska.

s/ Janna Lelchuk

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v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DECLARATION OF LYNN MEYERS

1. Lynn Meyers declares, under penalty of perjury, as follows:

2. I am a teacher at Juneau Douglas High School. On January 24, 2002, during the time when the Olympic Torch Relay was passing by the Juneau Douglas High School, Micaela Fowler Croteau was an enrolled student in my class.

3. Pursuant to the instructions of the Principal's office, I elected to let my students go out to observe the passing of the Olympic Torch as a school sponsored and supervised event.

4. The entire class went out to view the relay. Individual students were not given the option of remaining in class, nor were they released to do as they pleased. They were to watch the relay with the rest of the student body and return directly to their classrooms.

5. I did not insist that my students remain together as a group, as long as they remained with the student body viewing the relay. I did, however, assist in providing crowd control with the student body in general.

6. For the most part the student body was very well behaved while awaiting the arrival and observing the passage of the Torch. There were numerous administrators, teachers (including myself) and staff interspersed with the students. The student body was at all times under the supervision and control of the administrators, teachers and staff.

DATED this *7th* day of February, 2003, at Juneau, Alaska.

s/ Lynn M. Meyers

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

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PLAINTIFF

v.

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DEFENDANTS

SECOND SUPPLEMENTAL
DECLARATION OF DEBORAH MORSE

DEBORAH MORSE declares under penalty of perjury as follows:

1. I am the Principal of Juneau Douglas High School and a named defendant in this action. I make this second supplemental declaration in opposition Plaintiff's Motion for Summary Judgment and in support of Defendants' Cross-Motion for Summary Judgment.

2. I have carefully reviewed the affidavits of students Makana Field, Micaela F. Croteau, Sara Croteau, and Melinda Madsen.

3. These affidavits are cited by the plaintiff in support of his contention that observing the Olympic Torch Relay was not a school sponsored and supervised event. To varying extents, the affidavits attempt to make the following points, none of which is correct:

a. That observing the Olympic Torch Relay was voluntary and that some students left the area. Attendance at the relay was voluntary on a class-by-class basis. Once the teacher and his or her students

decided to observe the relay, individual students were not given the option of remaining in the classroom or doing something else while the relay passed. They had to go outside and observe the relay with their class. While it is possible (indeed probable) that a very few students disregarded these instructions and left the viewing area, anyone who did so would have been considered truant and in violation of the clear staff directive to observe the relay from either side of Glacier Avenue in front of the high school and then return immediately to their classrooms.

b. That the students who observed the relay were not organized as a student body and were not required to stay with their classes or teachers. Students were not required to stay with their class or their classroom teacher as long as they remained in the viewing area (i.e., either side of Glacier Avenue in front of the high school). Although teachers were not required to remain with their classes, teachers, administrators and other staff were interspersed throughout the body of students at appropriate intervals for maintenance of crowd control.

c. That the school staff was not, in fact, in control of the student body. This is absolutely false. There were more than 1000 students lining Glacier Avenue to observe the passing of the torch. As a group, the student body was extremely well behaved throughout the event. Indeed, the only group that was markedly unruly was the group that included the plaintiff and his friends.

DATED this *7th* day of February, 2003, at Juneau, Alaska

s/ Deborah Morse
Deborah Morse

IV. TRANSCRIPT EXCERPTS

JUNEAU SCHOOL DISTRICT

IN THE MATTER OF:
JOSEPH FREDERICK, STUDENT

TRANSCRIPT OF HEARING*

March 13, 2002

page 59, line 15 to page 60, line 3

[J. FREDERICK:]

* * * * *

So I went to her office. And her and Mr. Staley were there and I asked them what was wrong. And they asked me about the banner. And I was like, "Doesn't the Bill of Rights still exist? Isn't it still in effect?" And they said, "Not in school it's not. You don't have rights here." And then I quoted Thomas Jefferson when he said freedom of speech cannot be limited without being lost. And they blew it off. They didn't seem to care about anything I was saying.

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* The school board hearing transcript excerpts reprinted herein were part of the district court record. The excerpt from pages 59-60 was also part of the court of appeals record.

They asked me to name everybody who was involved in holding the sign. I said I didn't know (begin p. 60) everybody. And then they immediately said I would be suspended for even longer for interfering with an investigation. And then (indiscernible) happened next.

* * * * *

page 123, lines 2-25

MR. MERTZ: By Joe.

MS. MORSE: I didn't see Joe throw anything.

MR. MERTZ: Was Joe acting disrespectfully to you?

MS. MORSE: He was never.

MR. MERTZ: Now, that list of trespasses -- supposed trespasses you referred to there. Which of those did you see yourself?

MS. MORSE: I -- I never did see him trespass.

MR. MERTZ: Not one?

MS. MORSE: Not one.

MR. MERTZ: (indiscernible) You stated -- am I correct -- that the so-called trespass incident turned out to be on the -- the swim pool parking lot. The police weren't called by you and your staff. Is that what you said?

MS. MORSE: They weren't.

MR. MERTZ: I'm going to show you a copy of the police report done by the arresting officer. Would you read this paragraph, and then I'll ask you a question.

MS. BECKER: Do you have a copy of that for us to look at Mr. Mertz?

MR. MERTZ: I'm sorry, I don't have another

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IN THE UNITED STATES DISTRICT COURT
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DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DEPOSITION OF JOSEPH FREDERICK*

August 21, 2002

page 9, line 2 to page 11, line 2

[A.]

* * * * *

A bong -- one reference which the school keeps referring to -- and many people have taken that to be the meaning -- would be a word -- a slang word for drug paraphernalia.

Q. And what kind of drug paraphernalia is it?

A. I believe something to just smoke out of.

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* Certain portions of the Deposition of Joseph Frederick, reprinted herein, are part of the court of appeals record but not the district court record. These portions are denoted in braces {as shown here} and include pages 13, 33, 81-82, and 108-109 in their entirety, as well as lines 1-12 and 22-25 of page 58.

Q. What kind of smoke?

A. Any kind of smoke, I guess.

Q. Marijuana smoke in particular?

A. It would be possible, I'm sure. It's smoke.

(Exhibits 1-4 duly marked)

BY MR. CROSBY:

Q. Handing you what has been marked Exhibit 1 there, it is something that I pulled off the Internet this morning. It says at the top, "Drug Facts, Office of National Drug Control Policy." It says, "Street Terms, Drugs and the Drug Trade, Drug Type, Marijuana." Do you see that?

A. Which column is it?

Q. Just the title up top. It says, "Drug (begin p. 10) Facts, Office of National Drug Control Policy."

A. Yes, I see that.

Q. All right. On the second page there, there is a definition of "bong." Do you see that?

A. I'm looking it up.

Q. Pardon?

A. Hang on one second. Yes, I see it.

Q. And is that the slang definition that you were referring to?

A. I believe that will fit, yes.

Q. And on the next page, there is a definition of the term "hit." Would you read that?

A. (Examines document) Yes.

Q. Are you familiar with the term "hit" as used in that definition?

A. Somewhat.

Q. You have heard that expression, "Take a hit?"

A. Yes, like a hit -- I have heard people say, "Take a hit off a cigarette," or -- once again, smoke would be considered -- use all the same terminology for any kind of smoking.

Q. Have you heard "hit" used in the sense that it is used in this definition that I have just shown to you?
(begin p. 11)

A. Yes, for drugs, marijuana, cigarettes. Yes, I have heard of it.

page 13, line 2 to page 15, line 4

{Q. But you don't think everybody would understand what a bong is?

A. I don't know.

Q. How about the phrase, "bong hit"? If you were to use that phrase with your classmates at Juneau Douglas High School, do you think they would understand what you were talking about?

A. I would say that when people use -- like, I have heard the term before, and people use it, and there is a general amount of people who can understand the meaning of it, but not everybody would know that. I don't know.

I have heard the term before, somewhat of your definition of it. I'm not too familiar with it, but, like, it just depends on people's preferences and what they do, whether or not they have that definition, or if they are familiar with the definitions.

Q. When you use the phrase, "bong hit" or "bong hits" in the banner that you made, what did you mean by it?

A. What did I mean by it?

Q. Yes.

A. Well, I didn't mean for anything to be} (begin p. 14) taken out of context, first of all. I meant it to be a parody,

just a quick laugh or a figure of speech, just because the Constitution gives you a right to free speech. But it doesn't say that it won't protect it if some people don't like it.

Q. The question is: What did you mean by "bong hits"?

A. By "bong hits"?

Q. Yes.

A. It could be mean --

Q. I'm not asking what it could mean. I'm asking what you meant.

A. I didn't write the banner alone. Like, other people had ideas and inputs.

Q. You were one of the people who wrote the banner, were you not?

A. Yes.

Q. What did you mean by "bong hits"?

MR. MERTZ: If it's the same answer, you can tell him it's the same answer. If you want to elaborate --

A. Same answer.

Q. Did you mean anything when you said "bong hits"?

A. Not necessarily. (begin p. 15)

Q. I understand not necessarily, but did you, in fact, mean anything by the phrase "bong hits," or was it a nonsense phrase?

A. It's pretty much nonsense.

page 15, lines 8-18

Q. You just said that it was a parody. What was the phrase, "Bong hits for Jesus," a parody of?

A. For an absurdity. I don't know.

Q. You were just trying to be absurd?

A. Somewhat, just -- it's absurd to some people, depending on -- everything is relative to people's preferences. I mean, some people might have taken offense. Some people might have been happy that it said "Jesus" in it. Who knows? I don't read minds.

page 16, lines 17-18

Q. And your sign meant nothing?

A. Yeah.

page 18, line 19 to page 19, line 6

Q. All right. Exhibit 5 is the transcript of your testimony before the school board. And if you could a look at page 70 of that?

A. (Examines document)

Q. All right. You were being asked by Ms. Gifford at line 6, "I'm just asking you about the phrase, "bong hits." You responded at line 10, (begin p. 19) "Many people reference it to drugs." You knew that, didn't you?

A. Yeah. Like I said, like some people -- I have heard the term, like, go around before, like -- but, I mean, some people would know it and some people wouldn't.

page 20, lines 15-20

Q. And you knew that at the time you put that banner together, didn't you?

A. That some people may interpret it as -- bong hits as related to drugs?

Q. Yes.

A. I knew that it was a possibility.

page 33, lines 2-25

* * * * *

{A. I know that towards the beginning of the '02 school year, I was not standing for the Pledge of Allegiance, and Ms. Milliron told me that Alaska Statutes require by law that everybody stand when they hear the Pledge of Allegiance.

She told me she would suspend me for ten days, and I had a discussion with her. Then she said she'd hold the days in abeyance. I still had a problem with it, and she said, "Okay, I won't." And there was nothing in abeyance. Later on I found out they were, because they used -- I think they used that as part of suspending me later on.

Q. Is that the incident that is logged here as occurring on October 29, 2001?

A. I believe so.

Q. The one that says, "Suspended for 10 days, with all 10 being held in abeyance. Grounds: 1.14 multiple category II, 1.06 Intimidation/Vendetta/Malicious intent." Is that the one?

A. Well, I recall how this actually came about. There was a discussion about the flag, and I calmly explained my point on it. Then she suspended me.}

* * * * *

page 56, line 1 to page 61, line 24

Q. He would have been around that age, anyway?

A. Yes, because he joined the military last spring.

Q. Now, you say that the idea itself came from you and your girlfriend?

A. The idea is -- the idea to hold up a banner?

Q. Yes.

A. Yes, from me and my girlfriend.

Q. Who came up with the phrase, "Bong hits for Jesus"?

A. It wasn't me. I'd seen it on -- the first place I'd seen it was -- I think I saw it on Tim's snowboard. I'm not sure. I have seen it -- it comes on stickers, like bumper sticker type things. People put them on different things.

I later found out that the term actually came from a Mardi Gras activity between the people out there partying and the evangelistic preachers having a little word battle, debate thing at Mardi Gras every year, I guess. Something -- that's where it originated, I believe, the saying.

Q. At the time that you decided to put this phrase on the banner, where did you get that (begin p. 57) phrase? In other words, did you know about the --

A. I didn't know about the Mardi Gras then. I'd seen it just on the stickers.

Q. Where had you seen the stickers?

A. I saw -- I think I have seen one on a car and on a snowboard. Those are the two places I know I have seen stickers with that on it before.

Q. I understand that you didn't come up with the phrase, but were you the one who decided that was the phrase that would go on the banner?

A. First we had the idea to hold up a banner. We wanted something that -- we just wanted to hold up a banner for the TV cameras, and we wanted it to be somewhat pushy, so we threw in Jesus as a religious thing, to where something that could be controversial or funny or whatever you wanted it to be, or nothing if you don't -- I mean, I don't see it as deep, deep thought or philosophy or anything, you know. It's just anything.

We wanted to hold a banner up for the TV cameras because we heard it was nationally broadcast. I had been disappointed in my civil rights at the school. Like they -- like, for instance, Mr. Staley telling me that the Bill of Rights does not apply in schools, and different (begin p. 58) {instances with the school. They didn't feel that they had to give students rights when they actually do.

And everywhere it seems like people don't realize how important, like, our -- like the First Amendment is. We wanted to just, like, say something like -- that is not -- to me, I couldn't believe that that was confiscated, but -- how should I say this? Like, I figured that if people didn't think we should be allowed to do that, then we weren't in America anymore. It's changing.}

Q. Now, you said you wanted to be pushy. What do you mean by being "pushy"?

A. Well, not pushy, just somewhat to where you are testing something. If we held up a banner that said "Hi," or "Hello," you know, you know, that's not really testing free speech at all.

Q. So you wanted it to be something controversial?

A. Yes.

{Q. And how did you see this phrase as being controversial?

A. Well, it is all in preferences, once again. One way it could be controversial is if you} (begin p. 59) take "bong" as

in the definition that you found on the Internet many times, and put it "for Jesus." Christian people -- I do not believe that they -- I believe they are anti-drugs, so if you put that together, it's somewhat ironic. Some people might just look at it as a joke or whatever. I'm lost on words.

Q. So if somebody perceived this as advocating drugs, then it would be a controversial banner, correct?

A. Yes, if they did, or it could just be like stupid, like not meaning anything.

Q. Were you reaching for some kind of phrase that would be controversial and yet ultimately meaningless?

A. Yes.

Q. And, again, you say you wanted the school to react to this, did you not?

A. Not necessarily. Mainly I wanted it on the TV cameras.

Q. Your intended audience was not your fellow students, was it?

A. No. I mean why play to an audience of only a number when there is cameras right there playing to millions. (begin p. 60)

Q. What did you want the TV audience to perceive as they saw this banner, as the runners passed by Juneau Douglas High School?

A. I just wanted to show that -- to reassure myself that this is America. I have a Bill of Rights. I have the right to do something, whether it's somewhat -- somebody finds it offensive, or somebody doesn't agree with it. I have the right to it.

Q. And what was the message that you were trying to communicate to the national TV audience?

A. That free speech is free speech. As long as you are not threatening someone or harassing someone, you can say what you want.

Q. What was the message that you were trying to convey to the national audience by using the phrase, "Bong hits for Jesus"?

A. The phrase I used doesn't matter. I could have used another phrase and still been going for the same message. It's just to say what you want. I mean, the Constitution doesn't just protect, like, deep speech or legal speech. I mean --

Q. Well, were you trying to communicate an idea to people? (begin p. 61)

A. Just to show that you can do things, like, do what you want because of the Constitution. People don't realize, like, the possibilities, like what the Constitution means anymore. People have forgotten about it.

Q. Well, again, were you trying to communicate -- I realize that your point was that you thought the First Amendment permitted you to do this. But what idea were you trying to communicate with that banner that said, "Bong hits for Jesus?

MR. MERTZ: You have asked it and he's answered it several times. If you have already given your whole answer, say so.

A. Yes. Yes.

Q. Then maybe I don't understand it. You were not trying to convey any particular idea by that language?

A. No. I wasn't trying to spread any idea. I was just trying to assert my right.

Q. Were you trying to prompt a debate about the message, "Bong hits for Jesus"?

A. No, not really. Just to be able to say something.

page 62, lines 4-14

Q. I'm trying to find out who selected it.

A. No, I didn't select that. I mean, I agreed with it when we came up with it in the group. We were just, like, discussing what we could put on there. That seemed, like, light enough that there shouldn't be too big of a deal about it, but enough that we could -- they would let us do it. I mean, like, something that wasn't too easy, that of course they would let us do it, but something that might cause conflict. I'm not sure.

page 67, lines 11-17

Q. So this was just a meaningless string of words together?

A. It could be meaningless. It could be ironic that Jesus' followers don't approve of the "bong hits" definition of that, or it could be just -- what is that, you know? Like, it's all up to personal preferences.

page 68, lines 12-24

Q. Were you trying to state a religious message?

A. No.

Q. Were you trying to state an anti-religious message?

A. I was trying to assert my right to free speech.

Q. I understand that. I'm trying to understand what were you trying to say.

A. We weren't trying to put out a deep message to anybody. We weren't trying to put out a message at all, just show people, that, "Look, you have the right to free speech."

page 70, line 22 to page 71, line 4

Q. And you certainly understood that one way of understanding your banner was that it was a reference to drug use, correct?

A. It is a possibility. (begin p. 71)

Q. And you knew that when you made the banner, correct?

A. I had an idea that some people may see it that way.

page 72, lines 6-17

Q. Do you think that people who thought this controversial saying might be bad might construe it as advocating drugs?

A. It's not advocating drugs, but some people did take it that way. I was surprised that they did. But, like, the school, like Ms. Morse thought that that is what it was, but I didn't expect people to see it as advocating drugs.

Q. You didn't think that that was one possible interpretation of that sign?

A. I don't see how it's advocating anything.

page 73, lines 11-25

Q. Did you think that some people might object to the association of their god's name with a phrase that many people consider refers to drug use?

A. Could be a possibility.

Q. Was it a possibility that you considered at the time?

A. At the time of what?

Q. You just shook your head "yes" --

A. At the time of what?

Q. At the time you created that banner?

A. Sure, it was a possibility.

Q. It was a possibility that you considered at the time, correct?

A. Yes.

page 76, lines 17-25

Q. Was it your intent to attend your first-period class on that date? This would be January 24th.

A. Yes.

Q. And this would have been your auto shop class?

A. Yes.

Q. That starts at 8:00?

A. I believe it did on that day.

page 80, line 2 to page 81, line 25

* * * * *

{A. No. It's like you go up there and turn right or something.

Q. I'm trying to understand where you came back to Glacier Avenue. Was it down by J & J's?

A. Yeah. We walked out over across from Marie Drake, by the doctor's office area. Those streets are next to each other.

Q. Okay. Were there people lined up down there to view the torch parade?

A. Yeah.

Q. And then where did you go?

A. We walked down a little ways, like towards -- like from that area we walked down the street towards, like, the valley direction, like 100 yards or so.

Q. All right. And where did that put you?

A. Across from the pool, maybe.

Q. And did you remain across from the pool, or did you move further down towards the high school?

A. I think it was across from the pool. It was in that vicinity.

Q. And what time would this have been?

A. 9:00 something. I'm not exact. I (begin p. 81) wasn't checking my watch constantly. I didn't have a watch on.

Q. And why did you choose that spot to display your banner?

A. Glacier Avenue was one place I knew that it was coming by, and it was close to the school so I could go to class after I had done it.

Q. Did you consider displaying the banner, for example, down by J & J's?

A. J & J's was further back the opposite direction. We walked over and I think we stopped there because we stopped to talk to somebody we had recognized. I think we saw Eli on the sidewalk, and we stopped to talk to him. And that's just by chance we stopped there.

Q. Did you report in to school prior to watching the torch parade?

A. No.

Q. Did you at any time enter the building prior to the torch parade?

A. No.

Q. And this would have been during the period of time when your first-period class would be meeting?

A. I believe first or second.}

* * * * *

page 108, lines 1 to page 109, line 22

[A.]

* * * * *

{Then I quoted Thomas Jefferson to them in the office, saying that "Free speech can't be limited without being lost." They told me to stop arguing because I just got another five days right after I quoted Jefferson.

They pretty much went through the handbook seeing -- trying to find things that they could suspend me for that were all vague, display of offensive materials, but who is to say what is offensive? And truancy. They said that they suspend everybody who misses a class, but that is entirely untrue. I mean, they were just going through, using vague rules and things that normally aren't used, just because they were mad or embarrassed, or -- I don't know what their emotion was, but they didn't like it that I tested my free speech. I believe that they did not like me questioning their authority, and they did not want anybody thinking their own way.

Q. Is that pretty much it?

A. I think so. I'll run through it again. She came across the street. I said it was free speech. She said, "Not here." I pointed out that we were off school grounds, too. Because I purposely stayed off school grounds just to make (begin p. 109) sure there wasn't jurisdiction, even though as long as I was not disturbing the educational environment, I should have been allowed to hold it up on school grounds.

But I stayed off specifically to make it even more pure that I wasn't at school because I didn't want to have any

trouble with it. I just wanted it to be complete pure speech. That's why I stayed off school grounds purposely because of that.

And then I went to the office. Yes, their handbook is ridiculous. They can -- anything can be called disruptive. What if you sneeze in class? Then the discussion. I was only to get five days, which is what Ryan got for holding it up. He got five days. That's what she originally told me. Then once I said Jefferson's quote and asked her about the Bill of Rights, they said that I was getting another five days. I thought that was completely unfair.

Q. Anything else you remember?

A. Not at the time.}

page 124, lines 5-11

Q. So you refused to tell her what you meant by "Bong hits for Jesus"?

A. I could care less what it means. I didn't have any meaning, so I couldn't tell her.

Q. I beg your pardon?

A. I could care less what it means, so I couldn't tell her what I meant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DEPOSITION OF DEBORAH LYNN MORSE*

January 31, 2003

pages 7-9

[A.]

* * * * *

also some other courses through University of Oklahoma and Oklahoma State University.

Q. And education after that?

A. I've taken courses through -- my master's is through University of Alaska Southeast, but I have taken courses in Anchorage at the University of Alaska.

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* Pages 7-9 of the Deposition of Deborah Lynn Morse, reprinted herein, are part of the court of appeals record but not the district court record.

Q. And that's master's in what?

A. Educational leadership.

Q. What does that degree qualify you to do?

A. I'm qualified to be a K-12 principal.

Q. All right. And the courses you took in Anchorage were what?

A. I had taken a job in Dillingham as a special education teacher working with deaf students, and so I was taking sign language courses one summer.

Q. Oh. What other professional training or education have you had?

A. That's basically -- I've taken -- prior -- after my master's program, I have taken ongoing education classes. I was working towards my superintendent's endorsement and so I have had advanced school law classes and general classes in education.

Q. Okay, and where were you taking those courses?

A. Here in Juneau. I was currently in Juneau (begin p. 8) over the last ten years.

Q. Tell me about the advanced school law course. That was here also?

A. Yes.

Q. And who taught that?

A. Dave -- Dave Dagley (ph) I believe was his name. He was a -- he comes up every year, for several years had been working in the education program here and he's actually a professor at the University of Alabama in Birmingham.

Q. Can you just briefly tell us what topics you covered in that?

A. It would've been advanced education, law-related cla- -- topics. He has an emphasis in special education, so there was a lot -- overview of the special education and school law and such.

Q. Well, I'm asking because we all know what that case is about. Did that course or any others you took cover civil rights aspects of school law?

A. Yes.

Q. In what way?

A. We would've gone over the different cases related to students' rights and policy surrounding schools and related to being a principal or a superintendent. (begin p. 9)

Q. Did that include First Amendment issues?

A. Yes, it did.

Q. Can you tell me, to the extent that you recall, what topics you covered within that subject?

A. Of course we would've gone over Tinker, Hazelwood, Bethel, Frasier, all of the pertinent case law related to student rights or school -- anything related to schools.

Q. And when did you take that?

A. It would've been -- the advanced school law was probably taken about nine -- eight, nine years ago. I don't remember exactly.

Q. Well, I don't want to spend too much time on peripheral things, so let's go right to the day of the Olympic torch relay. Tell me what you know or understand about what planning went into the relay by the school district, and I mean -- by the district, I mean anybody in the district.

A. Can you restate that? I'm not sure if I -- exactly what you're saying.

Q. Okay, it's what planning went into district participation in the relay.

A. Okay, the topic first came up at an administrative meeting. The district, every month, we have a meeting with the administrators. At that point

* * * * *

page 68

[A.]

* * * * *

holding it up and unrolling it because it was a large banner. So I feel like somebody was -- they were very cooperative of each other on that.

Q. Anything else that led to that conclusion?

A. No.

Q. Other than what you've mentioned, did they-- the people holding the banner, did they do anything else that was disruptive?

A. At the time they were holding the banner, no.

Q. Okay, but later you've mentioned their reaction or Joe's reaction at least to your coming up to them. Anything else that you considered disruptive?

A. Other than coming -- not -- refusing to come with me at my directive and having to -- you know, I asked them to come with me and refusing to do that.

Q. Okay. Anything else?

A. No.

Q. If I could. On Page 3 of that affidavit starting at the sixth line from the top, you state that you are sure that he did

not make a quotation from Jefferson while in the office. And I don't think anybody's saying he said, "Jefferson said," but if we take that to mean a statement about freedom of speech or rights of freedom of speech, there you say you were sure he didn't say it in the office. Now I thought you

* * * * *

V. MISCELLANEOUS DOCUMENTS

JUNEAU SCHOOL BOARD
POLICIES AND REGULATIONS
1422, 5520R, 5530, 5530R-1,
5530R-2, 5600, 5600R, AND 7430

[Attachments 1-8 to the Declaration of Deborah Morse]

BOARD POLICY NO. 1422

HEALTH EDUCATION

The Superintendent shall develop and implement a coordinated, sequential health education program, which includes instruction in alcohol and drug abuse prevention, dental health, family health, environmental health, social/emotional health, first aid safety, nutrition, and how to access health services. The program will provide students with an opportunity to acquire knowledge that will encourage good health habits for life. Instructional units will be appropriate to the age, maturity, growth, and development of students.

The program will be taught by appropriately certificated district personnel, including counselors, physical education teachers, nurses and classroom teachers. In addition, community resource persons and health organizations may be enlisted to provide enrichment and extensions of the Health curriculum.

A.S. 14.30.360 et seq.
A.S. 14.52.020(a)
A.S. 14.52.100
4 A.A.C. 06.130

Adopted 10/23/84
Revised 5/21/96

BOARD POLICY NO. 5520R

DISRUPTION AND DEMONSTRATION

In accordance with the rights accorded students attending schools in the Juneau City and Borough School District, the district expects all students to act in a manner that will enable themselves to acquire the fullest education possible and avoid behavior that is harmful to the good order of the school, themselves, or fellow students. The following regulations represent the general guidelines for student behavior that guarantee a teacher's right to teach and a student's right to learn.

1. Disruption of School

A student shall not use violence, force, noise, coercion, threat, intimidation, fear, passive resistance or any other conduct disrupt any lawful mission, process, or function of the school. Neither shall a student urge other students to engage in such conduct if a substantial and material disruption or obstruction is reasonably certain to result from his or her urging.

2. Assault on a School Employee

A student shall not intentionally cause or attempt to cause physical injury or intentionally behave in a way that could reasonably cause physical injury to a school employee.

Neither self-defense in the absence of other reasonable options nor action undertaken on the reasonable belief that it was necessary to protect some other person will be considered an intentional act under this rule.

3. Assault of a Student or Other Person Not Employed by the School

A student shall not intentionally cause or attempt to cause physical injury or intentionally behave in a way that could reasonably cause physical injury to any person.

Neither self-defense in the absence of other reasonable options nor action undertaken on the reasonable belief that it was necessary to protect some other person will be considered an intentional act under this rule.

4. Compliance With Directives

A student shall not fail to comply with the reasonable directives of teachers, student teachers, substitute teachers, teacher assistants, principals or other authorized school personnel during any period of time when he or she is properly under the authority of school personnel.

5. Violations of Published Regulations For Individual Schools

When circumstances in an individual school necessitate the issuance of specific rules of conduct in addition to the foregoing, students shall not fail to comply with them.

In resolving disruptions that occur on school premises the following procedures are to be followed:

1. First attempt to remove the disruption by conferring and negotiating with the perpetrators and applying the appropriate district and school rules as required.
2. Failure to resolve the disruption at step one may require the school administration to utilize the support of the local law enforcement agencies. If, in the estimation of the principal, emergency circumstances exist that threaten the health or safety of staff or students then the local law enforcement agency shall be contacted for assistance.

3. All cases of student disruption requiring outside assistance shall be reported to the Superintendent's office.

August 1987

Revised 2/17/98

BOARD POLICY NO. 5530

CHEMICAL USE

The Board of Education recognizes that the misuse of drugs has serious legal, physical, and social implications for the entire school community. The Board is committed to the prevention of drug abuse and the rehabilitation of drug users by educational means, but will take whatever steps may be necessary to protect members of the school community from harm and from exposure to drugs.

For the purpose of this policy, "drugs" include all controlled substances, all chemicals that release toxic vapors, all alcoholic beverages, and any prescription or patent drug, except those medications permitted by Board policy.

The Board prohibits the use, possession, and distribution of any drug or drug paraphernalia on school premises at any time and at any event away from school premises that is sponsored by this Board of Education. Students suspected of being under the influence of drugs will be identified, examined, and reported in accordance with the law, and their parents or guardians shall be contacted as soon as possible.

The Board directs the establishment of a program of drug education in grades kindergarten through 12, including the development and implementation of consistent regulations governing student conduct in relationship to chemical use;

regulations which will be fully explained to students in a deliberate manner at the beginning of each school term; inservice training programs for staff members in order that they may teach students about the consequences of drug use and effectively assist students who manifest problems with drug use; and a counseling program designed to help students resolve problems and make sound decisions.

The Superintendent shall develop regulations for the identification and discipline of students who use, possess, or distribute drugs or drug paraphernalia in violation of law or this policy and for the readmission to school and counseling of students who have been convicted of drug offenses.

A.S. 14.30.360
A.S. 11.71.010 - .040
A.S. 14.30.047

Adopted 1/8/85
Revised 8/12/86
Revised 9/6/88
Revised 6/6/89

BOARD POLICY NO. 5530R-1

CHEMICAL USE: PREVENTION AND INTERVENTION

I. Statement of Philosophy, and Goals

A. Philosophy

The Juneau School District recognizes alcohol and other drug use and dependency are diseases and is firmly committed to assisting all students who have use problems who are willing to cooperate in finding a solution. It is the policy of

the District to identify students with alcohol and other drug use problems and to work with them and their families on a voluntary basis, whenever possible. The District shall continuously develop and maintain K-12 programs in prevention and intervention.

B. Program Goals

1. Abstinence. Student use of alcohol and other mind altering drugs impairs the learning process and is illegal. When students are harmfully involved with alcohol and other drugs they jeopardize their own learning program and seriously impact the learning environment for all other students in order that their development can reach full intellectual, emotional, social and physical potential.

2. Community Partnerships. The District is committed to a comprehensive partnership involving home, school and community to combat pervasive high rates of adolescent use of alcohol and other drugs.

3. Prevention Through Health Education. Students will be required to attend health classes with substance use prevention curriculum.

4. Intervention. Students using substances or involved in negative school-related behaviors which indicate or are consistent with substance abuse, may be assessed and referred for diagnostic evaluation and treatment appropriate to the level of health impairment.

II. Program Design

A. Health and Safety Curriculum Committee. The Health and Safety Curriculum Committee is designated by the Superintendent and the Director of Curriculum and is responsible for the K-12 health and safety curriculum, including chemical health components.

B. District Cluster Team. The District Cluster Team is an interagency networking group which conducts annual reviews of current policies, regulations, procedures, forms and training plan, and recommends revisions for approval and adoption by the Board of Education and the Superintendent.

1. Conducts annual reviews of current policies, regulations, procedures, forms, staff development plan and recommends revisions for approval and adoption by the Board of Education and the Superintendent.

C. Student Assistance Teams. The principal in each building, appoints a Student Assistance Team to implement chemical health programs and supervise the student assistance counselor(s) on a daily basis. The Student Assistance Team is responsible for building-level implementation of approved prevention, intervention and sobriety support programs.

D. Student Assistance Counselors. Student Assistance Counselor may be either a counselor assigned by a state-accredited drug or abuse alcohol treatment agency or a drug/alcohol certified school district employee.

III. Prevention

Each school shall instruct students in issues related to the use of alcohol and other drugs. Programs shall consist of three distinct components: (1) Pharmacology of alcohol and other drug use; (2) The Disease Process of Chemical Dependency and (3) Resiliency Training.

Prevention activities may be increased for students referred by the Student Assistance Team as having risk factors which may contribute to future drug/alcohol dependency problems.

IV. Intervention

A. Identification Procedures

1. Methods of Identification. A behavioral checklist, direct observation of possession or use, positive Rapid Eye Examination, Alco-strip or Breathalyzer are all methods which may be used to identify students suspected of using drugs/alcohol.

2. Behavioral Checklists. Behavioral checklists are District forms designed by the District Cluster team to indicate signs and symptoms of drug/alcohol use or at risk behavior. Behavioral observations will not include diagnostic comments. When requested by the Student Assistance Team, all appropriate school staff will complete behavioral checklists, citing observed behaviors, on students under review by the Student Assistance Team.

3. Procedures for Use of Rapid Eye Examinations. Rapid Eye Examinations have proven to be an effective drug use screening device. They merely indicate the possible

presence of drugs/alcohol and will be administered according to the following procedures:

(a) Only by school district personnel who have been trained in their use.

(b) Only to students who exhibit one or more of the behaviors on the behavioral checklist and whose conduct suggests reasonable basis for suspecting drug/alcohol use in violation of District policy or regulation.

(c) The parents of any student who has been tested will be notified. If a student tests positive on the Rapid Eye Test an observed quantitative urinalysis will be required. The observed quantitative urinalysis shall be performed by a state certified drug/alcohol agency. The cost of the observed quantitative urinalysis shall be paid by the District.

4. Procedures for Use of Alco-strips or Breathalyzer Tests.

(a) Alco-strip or breathalyzer tests shall be administered only by school district personnel who have been trained in their use.

(b) Alco-strip or breathalyzer tests may be administered only to students who exhibit one or more of the behaviors on the behavioral checklist and whose conduct suggests reasonable basis for suspecting drug/alcohol use in violation of District policy or regulations.

5. Refusal to cooperate in a Rapid Eye Examination, Alco-strip or breathalyzer or to obtain and report the results of urinalysis as required by these regulations will result in imposition of discipline as provided in Administrative Regulation 5530R-2 as if the student were under the influence of alcohol or another controlled substance.

B. Referrals.

1. Voluntary Referrals may be made by a parent, the student (self-referral), other students, staff, or community groups or agencies, such as the police, social workers, etc. Any school staff member who learns of a student's behavior which warrants attention will communicate the concern to a member of the Student Assistance Team.

2. Any violation of the student drug and alcohol regulations requires mandatory referral to Student Assistance Team. Serious infractions of the student code, such as assault, possession of a weapon, excessive absenteeism, etc. may be deemed sufficient to require referral to the Student Assistance Team for observation or assessment.

3. Referral and Treatment. Except as expressly provided in these regulations, diagnostic evaluations, testing, professional treatment and professional aftercare, when needed, will remain the responsibility of the student and parent or guardian. The District is committed to cooperation during treatment and aftercare.

The District does not assume responsibility for diagnosing the level of drug or alcohol involvement or the extent of health impairment.

Student Assistance counselor will refer students to a state certified drug/alcohol treatment agency for these services.

C. Student/Parent Conference.

1. If the Student Assistance counselors determine that the student is using alcohol or other drugs, or is at high risk for drug/alcohol use, a member(s) of the Student Assistance Team will meet with the student. The parent or guardian will be contacted to review the Team's findings and provide input for an intervention plan; except when consent for release of information has been denied by a student who has self-referred.

D. Intervention Plan.

1. Development of Plan.

After reviewing all available information about the extent of a student's drug/alcohol involvement, the Student Assistance Team shall develop an Intervention Plan to meet the individual needs of the student. The Intervention Plan may include any of the following elements, in addition to other elements at the discretion of the Student Assistance Team, depending on the level of drug/alcohol involvement:

(a) Prevention education to strengthen pharmacology knowledge, chemical dependency or knowledge, or resiliency training. This program may include family members.

(b) Referral to state certified drug/alcohol treatment agency for diagnostic evaluation and observed quantitative urinalysis.

(c) Referral to drug/alcohol treatment or 12-step program attendance.

(d) Verification of abstinence by treatment status report, observed quantitative urinalysis test, Alco-stick, or Rapid Eye Examinations.

(e) Sobriety Support.

2. Modification of Intervention Plans. Intervention Plans are intended to be dynamic and may be modified by the Student Assistance Team at any time to reflect additional information or to meet the changing needs of the student.

3. Review of Plans with Student and Parents; Consent. Intervention Plans and any changes to existing Intervention Plans shall be reviewed with the student and parent prior to implementation. Intervention Plans require the consent of the parent(s) or legal guardian(s) prior to implementation, with the exception plans developed as a result of a student's violation of Board Policy 5530.

4. Student Assistance records will not be placed in the student's permanent district cumulative file. The district may however, maintain separate, non permanent records as long as the student remains enrolled in the school system.

6-6-89

Revised 11-94
Revised 10-95

BOARD POLICY NO. 5530R-2

CHEMICAL USE DISCIPLINE

USE AND POSSESSION OF CONTROLLED SUBSTANCES

Students are not to use, be under the influence of, or possess any quantity of controlled substances (drugs) or drug paraphernalia, alcoholic beverages or other intoxicants while on school grounds, when going to or coming from school, during school hours (whether on or off campus), or while going to, attending, or coming from extracurricular and school sponsored activities.

Discipline responses advance to the next level for each subsequent violation. Records of violations shall cumulate from one middle school to the other if the student changes the school he or she attends and are cumulative from one grade level to the next from grade 8 through grade 12.

A. FIRST VIOLATION FOR USE OR POSSESSION - LEVEL I

1. Administrative/parent contact.
2. Notification of Police.
3. Suspension up to ten days.
4. Development of Intervention Plan.
5. Administrative/Counselor/Parent Conference to review Intervention Plan during the period of suspension.

B. SECOND VIOLATION FOR USE OR POSSESSION - LEVEL II

1. Administrative/parent contact.
2. Notification of Police.

3. Suspension up to 30 days (requires hearing if over 10 days).

4. Intervention Plan.

5. Administrator/Counselor/Parent conference to review Intervention Plan for school readmittance.

C. THIRD VIOLATION FOR USE OR POSSESSION - LEVEL III

1. Administrative/Parent contact.

2. Notification of Police.

3. Administrative referral to the Superintendent for consideration of expulsion from the Juneau School District by the School Board.

DISTRIBUTION OF CONTROLLED SUBSTANCES

This section shall apply to:

1. Any student who distributes controlled substances, alcoholic beverages or other intoxicants to one or more other students, regardless of amount, at any time while on the school grounds, while going to or coming from school, during school hours (whether on or off campus), or while going to, attending, or coming from school sponsored activities.

A. FIRST VIOLATION - LEVEL I

1. Administrative/parent contact.

2. Notification of Police if the conduct does not already include formal charges.

3. Suspension up to 30 days (requires hearing if over 10 days).

4. Intervention Plan.

5. Administrator/Counselor/Parent conference to review/approve Intervention Plan for readmittance to school.

6. Written warning for Level II referral.

B. SECOND VIOLATION - DISTRIBUTION - LEVEL II

1. Administrative/Parent contact.

2. Notification of police if the conduct does not already include formal charges.

3. Suspension pending a final resolution of criminal charges or the completion of administrative proceedings under this regulation (may require hearing).

4. At the conclusion of administrative or judicial proceedings:

a. Where the proceedings do not result in substantiation of the charges the student may be reinstated to the regular educational program or, where the facts warrant such treatment, the student may be disciplined under the "Use or Possession" sections of this Policy.

b. Upon conviction or entry of a plea of guilty, if the matter is processed through the judicial system, or upon substantiation of the charges by the School Board, the student shall be expelled from the Juneau School District.

Any student expelled under this policy may petition the Board for reinstatement to regular student status under AS 14.30.047 before the end of the expulsion period. Any subsequent violation of this policy by a student so reinstated shall result in sanction under Level III for Use or Possession or Level II for Distribution of Controlled Substances.

There shall be a common set of rules for the entire District. The Superintendent may authorize the imposition of stronger or weaker penalties where unusual circumstances warrant deviation from the penalty schedule described above.

An investigation of an alleged violation of this regulation may be initiated by a report to school personnel from any source. It is not necessary that a District staff member witness an alleged violation.

CLARIFICATION OF TERMS

Extracurricular or School-Sponsored Activities:	All activities sponsored by the District other than those that are offered for credit toward graduation or required by law. Dances, field trips, carnivals, extra-curricular clubs and teams, intramural or interscholastic activities of any nature, music festivals, forensics, Baccalaureate and Commencement are examples of these activities.
Distribution:	"Distribution" means the act of transferring possession from one student to another student, regardless of whether a sale has occurred.
Drug Paraphernalia:	Any object designed, marketed for use in, or modified in such a way as to make it usable for, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance including any object described in CBJ Code 36.45.010.

Controlled Substance:	Any substance whose manufacture, distribution or possession is restricted by the provisions of AAS 11.71.

8-12-86

Revised 3-88
Revised 6-89
Revised 10-95

BOARD POLICY NO. 5600

STUDENT DISCIPLINE

The Board of Education directs the schools to help students become useful, productive citizens, responsible for their own actions.

Teachers and other employees of the Board of Education having responsibility for students shall have the authority to take such means as may be reasonably necessary to control the disorderly conduct of students in all situations and in all places where such students are within the jurisdiction of the School District.

For serious infractions, disciplinary alternatives shall be discussed with the parent(s) or guardian(s). The Board recognizes and respects the rights of parents to participate in decisions about disciplinary procedures to be used with their own children.

4 A.A.C. 07.010
4 A.A.C. 07.030
4 A.A.C. 07.050

Adopted 5/21/85
Revised 6/15/99

BOARD POLICY NO. 5600R

STUDENT DISCIPLINE

1. The principal shall notify all parents of the policy and regulations related to student discipline to be used within the building.

2. When a pattern of inappropriate behavior is apparent, a comprehensive plan to direct and modify student behavior will be developed through cooperative effort by the principal, the student, the parent(s) or guardian(s), and appropriate staff. All parties involved in the development of the plan will be requested to sign the final plan document and shall be provided with a copy of the document.

3. Ethnic and gender data by building of disciplinary actions shall be compiled by the Administration. A list of infractions resulting in discipline and a record of numbers of students who have received discipline more than one time shall be maintained by the Administration. An annual report shall be made to the Board which discusses the effectiveness of Discipline Policy #5600, its Rules & Regulations including appropriate recommendations.

3/26/85

Revised 6/15/99

BOARD POLICY NO. 7430

SCHOOL SAFETY AND SECURITY

The Board of Education is committed to preventing violence and crime on school grounds and to protecting the safety and well being of all members of the school community. The Superintendent or designee shall establish, as appropriate, procedures for maintaining a safe learning and working environment in accordance with all applicable laws and regulations. These procedures shall include procedures for addressing threats to safety posed by individuals and environmental phenomena and procedures for securing District buildings, records and funds.

All the District's policies, regulations and procedures relating to student discipline and safety are components of the District's school disciplinary and safety program. Those policies, regulations and procedures that relate to the following topics must be approved by the Board. They shall be reviewed at least once every three years and revised as needed.

(a) Standards for student behavior and safety. These standards must reflect community standards, incorporate basic requirements for respect and honesty, and must be developed and periodically reviewed pursuant to a collaborative process including students, parents, teachers, and other individuals who are responsible for student safety. Disciplinary standards and procedures for students must be consistent by grade level for all schools in the District.

(b) Standards relating to when a teacher is authorized to remove a student from the classroom for failure to comply with student behavior and safety standards,

defiant behavior, or behavior that endangers the welfare, safety or morals of others.

(c) Procedures for notifying teachers and other members of the school community of dangerous students.

(d) Standards for when teachers and other persons responsible for students are authorized to use reasonable and appropriate force to maintain safety and order.

(e) Policies necessary to comply with applicable state and federal laws, including the Individuals with Disabilities Education Act.

(f) Standards to address the needs of students for whom mental health or substance abuse may be a factor in their non-compliance with school disciplinary or safety standards.

(g) Policies for implementing a student conflict resolution strategy, including non-violent resolution or mediation of conflicts and procedures for reporting and resolving conflicts.

Adopted 6/18/02

JDHS DISCIPLINE PLAN (CATEGORIES I AND II)

[Attachment 9 to the Declaration of Deborah Morse]

2000-01

JDHS DISCIPLINE GRID

CATEGORY I _____JDHS DISCIPLINE PLAN

Definition: Infractions which constitute a significant danger to the health, safety and well being of the school population, or to the personal or public property thereof, committed within or upon school buildings or other property during normal school hours or at school sponsored/sanctioned function or activities outside of such hours.

(See Cat I. Consequences and guidelines for required, additional, and optional steps.)

1.01: Possession or use of a weapon, explosives or other device falling within the definitions and restrictions set forth in B.P. 5540:
-indefinite suspension
-recommended expulsion

1.02: Possession or use of commercial defensive devices (mace, lasers, etc.):

1.03: Abuse of Technology; unlawful or unauthorized access, theft, vandalism, fraud, etc.:
-restitution/relevant community service
-recommended expulsion

1.04: Assault/battery/fighting/attempt to do bodily harm, passive supporters and participants:
-recommend expulsion

1.05: Vandalism, destruction of personal or public property:
-restitution/relevant community service
-recommend expulsion

1.06: Verbal harassment/intimidation/initiation/hazing/ promiscuity/vendetta or malicious intent. Threats to staff or students.
-OSS
-behavior plan/referral to the appropriate outside agencies

1.07: Arson, attempted or committed:
-restitution/relevant community service
-recommend expulsion

1.08: False fire alarm/fire apparatus/bomb threats/911 calls:
-restitution/relevant community service

1.09: Extortion:
-restitution/relevant community service

1.10: Theft:
-restitution/relevant community service

1.11: Solicitation of sale of controlled/illegal substance or paraphernalia:
-refer to Chemical Use Discipline 5530R-2

1.12: Possession or use of controlled/illegal substance or paraphernalia:
-refer to Chemical Use Discipline 5530R-2

1.13: Motor vehicle violation

1.14: Multiple or repeated category II infractions:

1.15: Refusal to identify self or respond to staff request

CATEGORY I CONSEQUENCES AND GUIDELINES

A. All sub-categories (except as noted) require the following in order:

1. An initial conference with the student and phone or written contact with parent or guardian;

2. Police referral/consultation (except 1.15);

3. OSS 1-10 days (except 1.01, weapons which also requires a psychological exam).

B. Additional/optional steps:

4. Expulsion recommendation (other than as required and noted) may be made as a consequence for any infraction which results in serious bodily injury (medical attention required) or gross property damage (felony degree).

5. A behavior plan and/or review of appropriate program placement may be used in addition to, but not in lieu of, other consequences.

6. Failure to comply with assigned consequences will result in increased penalties.

C. Guidelines:

1. A lesser or greater penalty than the minimum or maximum prescribed may not be imposed in any sub category of Cat. I or Cat. II.

2. Administrators and teachers are expected to use sound judgment in ensuring that all consequences fit the degree, nature and other circumstances attending an infraction, including the disciplinary record of the student; and are charged with the duty to maintain consistency, fairness, and objectivity in all disciplinary matters; and to demonstrate the same through appropriate documentation.

3. Administrators will enforce teacher referrals for infractions of approved individual teacher disciplinary plans.

2000-01

JDHS DISCIPLINE GRID

CATEGORY II _____ JDHS DISCIPLINE PLAN

Definition: infractions which constitute violations of school rules, policies, or teacher discipline plans, committed within or upon school buildings or other property during normal school hours or at school and sponsored/sanctioned functions or activities outside such hours.

(See Cat.II. Consequences and guidelines for required, additional and optional steps.)

2.01: Failure to follow safety procedures (shops, labs, etc.)
-confiscation of disruptive/unsafe materials

2.02: Failure to serve teacher-assigned detention:

2.03: Failure to possess or use passes appropriately

2.04: Unauthorized presence (restricted area)

2.05: Unsafe/defiant/disruptive behavior/moshing:

2.06: Trashing/littering/graffiti
-work detail, school/service restitution

2.07: Refusal to identify self or to respond to staff request

2.08: Refusal to cooperate/assist in investigation

2.09: Forgery/misrepresentation (passes, parent notes, etc.)
-restitution/relevant community service

2.10: Alibiing/encouraging infractions

2.11: Misbehavior while substitute present

2.12: Profanity or offensive language, possession or display of offensive material and clothing

2.13: Excessive tardy

2.14: Misuse of technology (non-Cat. I)

2.15: Possession or use of tobacco products/smokeless tobacco:
-citation/tobacco Education Program/smoking -cessation/community service

2.16: Skateboards, hacky sacks or roller blades

2.17: Truancy/skipping class

CATEGORY II CONSEQUENCES AND GUIDELINES

A. All sub-categories require the following in order:

1. An initial conference with the student and phone or written contact with parent or guardian.

2. Detention, 1-8 hours.

3. Conference at school with parent(s), teacher(s), student, and administrator (possible counselor) before re-admission to class.

B. Additional/optional steps:

1. In-school suspension (ISS) of 1-3 days and/or Saturday detention (4 hours = 1 day) may be assigned for multiple infractions (see 1.15 Cat. I) or for aggravated (extreme) infractions in any sub-category.

2. Failure to comply with assigned consequences will be considered a "multiple infraction".

3. A behavior plan/or review of appropriate program placement may be used in addition to, but not in lieu of, other consequences.

C. Guidelines: see Category I Guidelines.

DISCLAIMER

School rules published in this handbook are subject to such changes as may be needed to insure continued compliance with federal, state or local regulations and are subject to such review and alteration as becomes necessary for the routine operation of the school. Not all rules of behavior can be written and inserted in a guide book; however, we expect students to follow reasonable rules and not violate the rights of others.

DISCIPLINE ADMINISTRATORS ARE ASSISTANT PRINCIPALS DALE STALEY AND RON OSIBOV

FREDERICK'S NOTIFICATION OF SUSPENSION

[Attachment 12 to the Declaration of Deborah Morse]

Office of the Principal
10014 Crazy Horse Drive
Juneau, AK 99801 Telephone 463-1900

NOTIFICATION OF SUSPENSION

Parent(s) contacted: *Student is 18 - See ATTACHED NOTE*
Date: *1-24-02*
This is to inform you that *Joseph Frederick* Student # *32395* grade *12th* has been assigned an out-of school suspension on the following date(s): *1/24/02 - 2/6/02 10 day suspension*

The grounds for the suspension: *1.14 Multiple Category II Infractions (2.07, 2.17, 2.05, 2.12) see below*

Parent and student are required to attend a re-entry conference with the Administrator on *Feb. 7, 2002 @ 7:30 A.M.*

N/A Police referral / consultation (except for 1.14)

For suspensions that are more than 10 days you have the right to a formal hearing within 5 days of the suspension that has been scheduled for *N/A*. If both parent and student desire to waive the formal hearing procedure, a letter, clearly stating this intent and signed by both parent and student, shall be submitted to the principal, who is then permitted to render judgement, [sic] based upon information informally presented.

You have the right to appeal this suspension.

Expulsion may be recommended pending further investigation of this incident by the district.

Contact the Principals office at 463-1900 if you have any questions.

TEACHERS: Homework Yes _X_ or No___

Sincerely, s/ Deborah Morse, Administrator

cc: Administrators: Morse, Milliron (11th & 12th), Staley (10th), Scandling (9th & Choice).
Counselors: McCasland, A-J: McConnell, K-S: Hopson, T-Z & Special Education: Coenraad, ESL, Extended Learning, and Foreign Exchange
Drug & Alcohol Counselor: April Hotchkiss.
Attendance: Robidoux
Teachers
Suspension File

Enclosure: Suspension & Expulsion Policy and Procedures
revised: 09/01/01

2.12 - Display of Offensive Material
2.07 - Refusal to respond to staff directive regarding behavior
2.17 - Truancy/Skipping
2.05 - Defiant/Disruptive Behavior /
2.08 Refusal to cooperate/assist in investigation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J02 008 CV (JVS)

JOSEPH FREDERICK,
PLAINTIFF

v.

DEBORAH MORSE; JUNEAU SCHOOL BOARD,
DEFENDANTS

DEFENDANT'S RESPONSES TO INTERROGATORIES NO. 4 AND NO. 5 OF PLAINTIFF'S FIRST DISCOVERY REQUESTS

[Exhibit F to Plaintiff's Motion for Summary Judgment]

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Interrogatory No. 4 and Response

4. Describe all ways in which the display of the banner by the plaintiff and others during the Torch Relay disrupted classroom work at any school of the Juneau School District.

Defendants do not contend that display of the banner disrupted classroom work.

Interrogatory No. 5 and Response

5. Describe all ways in which the display of the banner by the plaintiff and others during the Torch Relay disrupted the non-classroom educational process in any school of the Juneau School District.

Display of a banner that would be construed by many, including students, district personnel, parents, and others witnessing the display of the banner, as advocating or promoting illegal drug use is inconsistent with the district's basic educational mission to promote a healthy, drug free life style. Failure to react to the display of such a banner at a school sanctioned event would appear to give the district's imprimatur to that message and would be inconsistent with the district's responsibility to teach students the boundaries of socially appropriate behavior.

Federal and state law require the district to keep the school environs drug free and to educate students on the dangers of using drugs and alcohol. The district's policies and strategic plan emphasize healthy, drug free lifestyles. The district's approved health curriculum teaches the dangers of using illegal substances. District policies and the JDHS student handbook prohibit the display of offensive materials, including materials that promote or advocate the use of illegal substances. The district's responsibilities as in loco parentis also require that messages advocating, or promoting use of illegal substances be removed, to the extent possible, from the learning environment, including the environment at school-sanctioned activities.

[Responses Verified on September 6, 2002]

JUNEAU EMPIRE ARTICLE - *STUDENTS AND OFFICIALS DISCUSS TEEN DRUG USE*

[Exhibit 1 to Defendants' Motion for
Partial Summary Judgment re Immunity]

JUNEAUEMPIRE.COM

[Logo and Hyperlink Omitted]

Students and officials discuss teen drug use

Tuesday, November 26, 2002

By JULIA O'MALLEY
THE JUNEAU EMPIRE © 2002

Like going to the prom or taking SATs, getting drunk or high is a teenage rite of passage, four Juneau-Douglas High School seniors said in recent interviews.

"I smoke pot to let go, it is a good way to relax," said a bookish, 17-year-old male student, who admitted to habitual use. "It is the only way I enjoy watching television."

The students, a young woman and three young men who spoke on the condition their names not be published, painted a picture of high school life where drinking and smoking marijuana are commonplace, and where harder drugs such as cocaine and ecstasy readily are available.

"I'd say at least 90 percent of the school (students) have at least tried pot," said the girl.

Though the teenagers' claim about the prevalence of drug use may not be true, it also is difficult to refute. No current data definitively describe the extent of the alcohol and drug

problem for young people in Juneau. Depending on which local expert you ask, drug use may be decreasing, remaining the same or soaring to epidemic levels.

Of the four students interviewed, three smoke pot a few times a month, have tried hallucinogenic mushrooms and are curious about trying ecstasy. The student who doesn't smoke pot, an athlete, described weekend drinking that sometimes includes consuming 12 shots of vodka in one evening. He also said his friends used "DXM," or Dextromethorphan, the active ingredient in cough syrup, which is legal and available over the Internet.

All of the students interviewed said they know other students who use cocaine. They also said they had seen a "smorgasbord" of drugs laid out at parties. The young woman described watching her friends get high on coke at such a gathering.

"You would watch people go in the bathroom and they would come out (high)," said the young woman, swirling her index finger at the ceiling.

The four students said that although they don't get high during school hours, they knew people who were stoned in class. Because of the open campus at the high school, it is easy to go somewhere secluded to smoke, the students said.

At least 60 percent of graduating students will be involved in marijuana, according to David Moore, a University of Washington substance abuse expert working in Juneau. Moore is leading the school district's effort to revamp the substance abuse intervention program with the Juneau Effective Prevention Project.

Moore has analyzed and cross-referenced statistics from Juneau's 1999 Youth Behavior Risk survey, the Department of Corrections, the Teen Health Center and the National Council on Alcohol and Drug Dependency. According to Moore, drug and alcohol use in Juneau are above the national average and have increased over the last decade.

"The rate (of marijuana use) among students who drop out is much higher," Moore said. "That is not the normal situation in other communities in the Lower 48. The norm in Juneau is alcohol and marijuana use."

Moore and other JEPP participants have called the situation a crisis, and stressed that many students who use drugs have a problem with chemical dependency and need treatment. Moore's estimates for marijuana use put Juneau above the national average. About 43 percent of American high school students have tried marijuana, according to a 2001 Youth Risk Behavior survey conducted by the federal Centers for Disease Control and Prevention.

In a similar survey given in 1999, 24 percent of JDHS student respondents said they had smoked pot in the previous month and 40 percent said they had consumed alcohol in the previous month. Adult alcohol consumption in Southeast Alaska is the highest in the country, Moore said.

"Twenty-seven percent of the high school (students) binge drank last month," Moore said, citing statistics from the 1999 survey. A binge-drinker consumes more than five drinks in a sitting.

JDHS Assistant Principal Laury Roberts Scandling disciplines students caught with controlled substances. She is more conservative with her estimate of the frequency of student drug use, saying statistics she has seen indicate drug use is decreasing. A comparison of the 1999 and 1995 Youth Behavior Risk surveys, for example, shows a decrease in marijuana and alcohol use.

"Chances are we would be about average. ... I wouldn't call it a crisis," she said. "We just don't have accurate data."

No comprehensive survey of Juneau's teenage drug use has been done since the school participated in the national Youth Behavior Risk survey in 1999, because the Alaska Legislature passed a law that made such surveys require positive parental permission, Scandling explained.

Previously, parents were given the option to object to the survey and to request their child be excluded. When high school officials sent out permission slips, only 30 were returned, Scandling said, making an accurate survey of the roughly 1,600 students impossible.

Without the survey, there is no way to know what the numbers are, she said. Moore and Scandling said students involved with drugs often perceive drug use as more pervasive that [sic] it is.

Bucking stereotypes about students who use drugs, the group of students described themselves as "involved," participating in more then one extra-curricular school activity. They had ties to school leadership organizations like student government and sports teams. All were college-bound. Their median grade point average is 3.75.

"I used to worry about pot (affecting my brain) but then I got a (very high score) on my SATs and now don't care," said one student.

Moore also said students don't realize that the health effects of habitual pot smoking may not be apparent immediately. On tests, pot-smoking students scored lower in areas that looked at short-term memory, the ability to think in new models, and reading comprehension, Moore said.

The school district has a strict, multifaceted policy with regard to substance abuse. Students who are caught drunk, high or in possession at school are reported to their parents and the police and are suspended. Drinking can result in a ticket; possession can result in an arrest. Three drug offenses can mean a student is expelled. Students also are given an intervention plan that involves drug education classes and some counseling.

With the new system being developed by the JEPP group, every student who commits a drug-related offense will be assessed to determine the level of his or her problem and given an 80-hour intervention plan tailored to his or her

specific needs with oversight by a case manager. A student with a serious substance abuse or chemical dependency problem may receive more counseling and referral to community drug abstinence support groups like Alcoholics Anonymous, Alanon and Narcotics Anonymous. A student who is not addicted to alcohol or other drugs might have a plan that includes preventative education and community service.

Currently all students who participate in school activities, from cheerleading to student government, must sign a "disassociation policy" in which they agree not to use drugs or alcohol or hang out with people who do. If an administrator can confirm that a student is at a party where alcohol is present, the student can be banned from an activity for 30 days. All the students interviewed were aware of this policy, and objected strongly to it.

"It basically means that there can be no such thing as a designated driver," one of the students said.

For the students interviewed who said they smoked pot, cost rather than getting in trouble or health concerns served as a prohibitive factor for drug and alcohol use.

"I'm pondering 'E,' I don't really want to pay 30 or 40 bucks a pop," the young woman said, referring to the drug ecstasy.

Students also said that for the most part, pot and other drugs were available to them at school from other students who deal. "Enough pot to get high" costs about $20, they said.

"You could probably get it for free if you are pretty. I never pay for drugs," said the female JDHS student.

Juneau Police officer Blain Hatch patrols the school and deals with drug complaints. He said more than half of the students likely will try marijuana before graduation. He said he hasn't seen any evidence drug use is increasing. Over the last two years, he's arrested a dozen or so students for

possession of marijuana, and says he routinely confiscates pot pipes.

"Hands down, marijuana and alcohol are the most prevalent (drugs used by high school students)," he said, noting he has heard rumors about use of drugs such as methamphetamines, ecstasy and cocaine. He also had an incident with a student who became violent after taking DXM.

Alcohol is the most dangerous drug, Hatch said, because it is the most prevalent and because intoxicated students may become violent or get behind the wheel. Students generally get drugs and alcohol from acquaintances or parents, he said.

One of the students interviewed said his parents were aware that he experiments with drugs. Others said their parents had no idea - and would be upset if they did know. All characterized school attempts to dissuade drug use as ineffective. The young man who didn't smoke pot said he abstained out of guilt, choosing alcohol instead because it was more accepted.

"When you smoke pot, you feel like you have lost something you had before," he said. "I don't want to feel like I've lost something."

The students who smoke pot characterized their use as recreational, saying they smoked to "have fun," "relax," or because drinking alcohol had become boring.

"I only have fun about a quarter of the time when I am stoned," said one young man. "We know that it is stupid, but we will probably do it in college."

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OFFICE OF NATIONAL DRUG CONTROL POLICY - DRUG FACTS

[Exhibit 1 to Defendants' Memorandum in Support of Defendants' Cross-Motion for Summary Judgment]

Drug Facts

Office of National Drug Control Policy

[Logos and Hyperlinks Omitted]

Street Terms: Drugs and the Drug Trade

Drug Type: Marijuana

STREET TERM	DEFINITION
3750	Marijuana and crack rolled in a joint
420	Marijuana use
A-bomb	Marijuana cigarette with heroin or opium
Acapulco gold	Marijuana from S.W. Mexico; marijuana
Acapulco red	Marijuana

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Bomber	Marijuana cigarette
Bone	Marijuana; $50 piece of crack
Bong	Pipe used to smoke marijuana
Boo	Marijuana; methamphetamine
Boo boo bama	Marijuana

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Herb and Al	Marijuana and alcohol
Herba	Marijuana
Hit	To smoke marijuana; marijuana cigarette; Crack Cocaine
Hit the hay	To smoke marijuana
Hocus	Marijuana; opium

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